

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

% Reserved on: 12th January, 2023
Decided on: 11th April, 2023

+ **CRL.A. 164/2019**

CHANDER BHAN THROUGH
 PAROKAR MAMTA SOLANKI

..... Appellant

Represented by: Mr.Vivek Sood. Sr. Advocate
 with Mr.Chetan Anand,
 Advocate.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Represented by: Mr.Prithu Garg, APP for State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J.

1. By this appeal, the appellant challenges the judgment of learned Trial Court dated 17th December, 2018 whereby the appellant was convicted for murder of one Pawan (deceased) with his licensed gun and also the order on sentence dated 20th December, 2018 whereby the appellant was directed to undergo imprisonment for life alongwith fine of ₹10,000/- in default whereof, simple imprisonment for six months for offence punishable under Section 302 of the Indian Penal Code, 1860 ("IPC") and was also directed to undergo simple imprisonment for six months for offence punishable under Section 30 of the Arms Act, 1959 ("Arms Act"). The other accused persons namely Amit, Dev Karan, Saroj, Suresh and Om Prakash were acquitted in the said case.

2. As per the prosecution there was a dispute between Bhagat Singh (complainant) who was the father of the deceased on one hand and the

appellant and one Om Prakash on the other hand, over an ancestral property in village Baprola. For the purpose of settling the dispute, on 25th September, 2013, the complainant/father alongwith his son/deceased and one relative Naveen went to the house of the appellant and on seeing them the appellant and other accused persons Om Prakash, Ms. Suresh wife of Om Prakash, Saroj wife of Chander Bhan, Amit and Dev Karan both sons of Om Prakash, who were present on the terrace started shouting “*saro ko goli mar do*”. Thereafter, the appellant pointed his pistol and fired which hit the complainant’s son/deceased. Thereafter, the complainant and Naveen took the deceased to Medanta Hospital in their vehicle and complainant made a call to the police at number 100, which was recorded vide DD No.53A which was marked to SI Ranbir Kumar (PW-21). SI Ranbir Kumar reached the spot i.e. outside H.No.201 at Village Baprola where he got to know about the firing incident after which he went to the hospital. He recorded the *rukka* (Ex. PW-2/A) on the statement of the complainant and got FIR No.336 of 2013 dated 26th September, 2013 under Sections 307/34 IPC and 27 Arms Act at P.S. Ranhola registered. Thereafter, search was made for accused persons and the appellant was found at H.No. 210 and was arrested vide arrest memo Ex.PW-8/E. Crime team was called at the spot, which inspected the scene of crime and prepared its report (Ex.PW-5/A). On 30th September, 2013, information of death of the deceased was received from the hospital after which the body was got shifted to Sanjay Gandhi Hospital and was sent for postmortem examination.

3. The postmortem on the body of the deceased was conducted on 30th September, 2013 by Dr. Manoj Dhingra and his report (Ex. PW-14/A) opined:

- “1. *Stitched craniotomy wound 32 cm long seen over left fronto-parieto-temporal scalp area.*
2. *Stitched laceration (?pellet entry wound) seen over right frontal scalp area, lying 8.5cm vertically above mid point of eyebrow. Underlying frontal bone was fractured.*
3. *Multiple healing pellets entry wounds (as per MLC) measuring 0.8 x 0.6 cm seen over left frontal forehead scalp area, right & left infraorbital area, left cheek, both sides of neck & over right supraclavicular area.*
4. *Black eye seen on left side of both eyelids.*
5. *Stitched laceration 3cm long seen over mid part of left pinna.*
6. *Surgical drainage wound 1x1 cavity deep in right 4th intercostals space along anterior axillary line.*

Opinion: *Death was due to shock as a result of damage for head & chest structures under injury no.1, 2 & 3.”*

4. Further investigation in the case was handed over to Insp. Manoj Kumar (PW-20) on 1st October, 2013. Accused persons Amit Kumar and Dev Karan surrendered before the court on 12th November, 2013 and were formally arrested by Insp. Manoj Kumar vide arrest memos Ex.PW-20/A & Ex.PW-20/B respectively. On 19th December, 2013, Saroj and Suresh had also surrendered before the court who were arrested vide arrest memos Ex.PW-19/A and Ex.PW-19/B respectively. After completion of investigation, charge sheet was filed against the appellant and the other accused persons i.e. Amit, Dev Karan, Saroj and Suresh. On 27th February, 2014, accused Om Prakash who was on anticipatory bail, was formally arrested vide arrest memo Ex. PW-20/C and supplementary chargesheet was filed. All the accused persons including the appellant were charged for offence punishable under Sections 302/34 IPC and the appellant was also charged for offence punishable under Section 30 of the Arms Act. To prove

its case, the prosecution examined 21 witnesses and on the other hand, the defence examined three witnesses.

5. Learned Senior Counsel for the appellant assails the impugned judgment on the ground that the ingredients of Section 300 of the IPC are not made out in the present case as there was neither any motive, nor any premeditation nor any intention nor knowledge and thus, the conviction of the appellant under Section 302 of the IPC is erroneous and liable to be set aside, for which, reliance was placed on the decision reported as MANU/DE/1105/2015 Suresh Kumar v. State of Delhi. It was further contended that the deceased and his father/complainant have numerous cases registered against them. It was also submitted that the learned Trial Court was in error in not relying upon the first report of incident by the PCR (Ex. PW-15/A) where the information given was that a quarrel had occurred and that 15-20 people came, started a fight and a fire was shot during the quarrel. It was further contended that the story of prosecution is unbelievable that the complainant visited the house of the appellant at an odd hour of 9:45 PM at which time the appellant and his entire family was waiting for them at their roof with a gun and that the appellant fired a shot as soon as they saw the complainant and the deceased. It was further contended that the prosecution failed to establish a clear connection between the weapon of offence i.e. gun and the appellant. No chance prints were lifted from the said gun and the said gun was recovered pursuant to the disclosure of the appellant at about 4.00 PM on 26th September, 2013 while the crime team had left the place of incident by 11:40 PM on 25th September, 2013. It was further contended that despite the presence of several people at the place of incident as also evident from the photographs

of the incident, no statement of any public witness was recorded and reliance was placed on the sole testimony of the father/complainant who not only was an interested witness but also had animosity towards the appellant. It was further contended that as per the testimony of Dr.Manoj (PW-14), the injury on the deceased was a rebound injury of the gun shot and no direct gunshot was aimed or hit the deceased. Learned Trial Court erred in not appreciating that the pellets could have hit Bhagat Singh and Naveen also who were standing right next to the deceased. It was further submitted that eye-witness Naveen (PW-17) was a complete stranger to the appellant and his family, and had visited the house of the appellant for the first time on the alleged date of incident, despite which, he identified all the members of appellant's family. It was further contended that there are material inconsistencies and contradictions between the statements of the complainant (PW-2) and the eye-witness (PW-17) because of which they cannot be believed.

6. Learned Senior Counsel for the appellant further contended that it was not the appellant who fired the shot, and even if he did, the case would at best fall under Section 304 Part II of the IPC. To substantiate this alternative argument, learned counsel for the appellant submitted that even if the case of the prosecution is to be believed; as per DD No.53A, there was a quarrel between the parties, one shot was fired by the appellant from the terrace at night time, there was no motive as also observed by the learned Trial Court, the deceased was taken to a hospital which was 35 kms away and the death occurred after 5 days, and thus, Section 302 IPC is not made out and only Section 304 Part II IPC can be attracted.

7. On the other hand, learned APP for the State submitted that the evidence on record is consistent only with the hypothesis of the guilt of the appellant, thus the learned Trial Court's judgment of conviction deserves to be upheld and the present appeal is liable to be dismissed. To substantiate the contentions, learned APP relied upon the following facts:

- i. That the presence of eye-witnesses Bhagat Singh (PW-2) and Naveen Kumar (PW-17) at the place of incident is unquestionable. Further, the narration of events by PW-2 has been duly proved and corroborated by Naveen (PW-17). Further, the name of Naveen (PW-17) also finds mention in *rukka* (Ex.PW-2/A), as the person who had accompanied PW-2 and the deceased to the appellant's house, which dispels any suggestion regarding his absence at the time of incident. Further, the blood of deceased was found present on the clothes of the eye witnesses and the same is duly proved by the FSL biology report (Ex.PW-16/A) and the serological report (Ex.PW-16/B), which opined that the clothes worn by PW-2 and PW-17 were found to contain human blood of the same blood group as that of the deceased's.
- ii. That the complainant (PW-2) categorically deposed that he himself made a call at number 100 and therefore, the recording of the informant's name in the PCR form (Ex.PW-15/A) as Pawan Solanki appears to be an inadvertent error on the part of the PCR operator. Further, the information received by the PCR was forwarded to PS Ranhola where it was recorded vide DD No.54/A (Ex.PW-21/B), however, the same inadvertently records the

- identity of the shooter as “*dada ka ladka*” instead of “*chacha ka ladka*”.
- iii. As per the crime team’s report (Ex.PW-5/A) bloodstains were found on the ground in front of the appellant’s house and the photographs (Ex.PW-6/A1-A14) were also taken which proves the scene of crime. One live cartridge and one empty cartridge case having inscription “KF-12” on the bottom of both the cartridges and “65 mm, 30 gm, ammunition factory Khedki Special” on the body were found on the roof of the appellant’s house (Ex.PW-8/J).
 - iv. Pursuant to the appellant’s disclosure statement (Ex.PW-8/G), from the roof of his house, the appellant got recovered one 12 bore gun made of metal and wood with inscription of gun number as “32178” and “National 1970 Small Arms Co.” mentioned on it from the top of an almirah lying in the room (Ex.PW-8/J). The appellant also produced his arm license bearing No. WDNI 090074 pertaining to the aforesaid 12 bore gun having SBBL No.32178. The appellant also got recovered a cardboard box from underneath the mattress of the bed having inscription “12 gauge 70 mm cartridge BB SHOTS Shaktiman Express Paper Cartridge” written on it, containing seven live cartridges of the said gun (Ex.PW-8/K).
 - v. The appellant did not dispute his ownership of the aforesaid 12 bore gun. Further, the appellant’s daughter Mamta Solanki (DW-3) in her cross examination admitted that the appellant was present at his residence at the relevant time.

- vi. MLC of the deceased (Ex.PW-3/A) records gunshot injury with multiple facial, neck and chest injuries and the death report (Ex.PW-21/E) opines the apparent cause of death to be firearm shot. Even the post-mortem report (Ex.PW-14/A) opined the cause of death to be shock as a result of damage of head and chest structures in consequence of the bullet injuries.
 - vii. As per the FSL ballistics report (Ex.PW-4/A), the empty cartridge case recovered from the spot was opined to have been fired from the recovered licensed 12 bore gun at the instance of the appellant.
 - viii. That the appellant's defence that the deceased came to his house with 20-25 persons and started quarrelling with them and that one of the persons accompanying the deceased fired a shot which hit the electric pole and on rebound, hit the victim is *ipse dixit* and has not been substantiated by the appellant.
8. Learned APP further relied upon the decision in (2003) 7 SCC 643 Sucha Singh vs. State of Punjab to contend that evidence of related persons ought not to be rejected rather must be accepted for the reason that they will not falsely implicate an accused while letting the actual culprits go scot-free. Reliance was also placed on the decision reported as (2016) 13 SCC 347 Brij Lal vs. State of Rajasthan to contend that even if the defence version was to be accepted, firing at a crowd by itself qualifies an act so imminently dangerous so as to attract the offence punishable under Section 302 IPC. Reliance was also placed on the decision reported as 2014 SCC OnLine Del. 1878 Manoj Kumar vs. State and 2009 SCC OnLine Del. 2170 Sunil vs. State.

9. Having heard both the parties at length and perusing the record, the following evidences emerge.

10. Bhagat Singh/Complainant (PW2) deposed that there was a dispute between him and the accused persons regarding an ancestral land. He stated that on 25th September, 2013 at about 8 AM, he had gone to the house of the appellant to settle the land dispute, on which, the appellant asked him to come in the evening. Thereafter, at about 9:45 PM, he along with his son/deceased and one relative Naveen went to the house of the appellant, when all the accused persons were standing on the roof of their house and the appellant was carrying a gun in his hand. All the accused persons shouted "*sab ko khatam kar do, goli mar do*" and thereafter, the appellant pointed his gun towards his son/deceased and fired a shot which hit the head of the deceased and blood started oozing out from the injury. He and Naveen took the deceased to Medanta Hospital in his car and he also made a call to the police at number 100. He stated that his statement was recorded by the police at the hospital and that his son expired in the hospital on 30th September, 2013. He identified the body of his son at the mortuary (Ex. PW-2/X) and after the post-mortem, the dead body was handed over to him and Naveen (Ex.PW-2/Y). In his cross-examination he stated that there was no other litigation between his family and the family of the accused persons. He stated that it took him 20-25 minutes to take his son to Medanta Hospital.

11. Naveen (PW-17) stated that on 25th September, 2013 at about 9.45 PM, he along with Bhagat Singh and deceased went to the house of the appellant, who along with Amit, Dev Karan, Suresh, Saroj and Om Prakash were present at the roof of their house and on seeing them the appellant and

the accused persons shouted “*inhe goli mar do*”, after which the appellant who had gun in his hand pointed the said gun towards us and made a fire which hit the deceased. The deceased fell on the ground, and he and Bhagat Singh shifted the deceased from the spot to the car and took him to Medanta Hospital. He stated that he handed over his bloodstained white coloured shirt and blue jeans to the police. In his cross-examination he stated that on the day of incident he had come to village Baprola to meet the deceased who was his friend for about four-five years prior to the incident. He further stated that prior to the incident he had never gone to the house of the appellant however, he had met the appellant and accused Om Prakash at the house of Bhagat Singh. He further stated that they had gone to Medanta Hospital via Dwarka and the car was driven by Bhagat Singh and it took them about 20-25 minutes in reaching the hospital.

12. SI Ranbir Kumar Sharma (PW-21) stated that on 25th September, 2013 he received DD No.53A (Ex.PW-21/A), pursuant to which he alongwith Ct. Dinesh went to village Baprola, Gaddhe Colony wali gali and outside House No.201, found bloodstains and got to know that someone had received bullet injury. In the meanwhile, Ct. Ram Nishan came to the spot and handed over DD No.54A (Ex.PW-21/B). Thereafter, he along with Ct. Dinesh went to Medanta Hospital and collected the MLC of injured Pawan (since deceased). He recorded the statement of the father of the injured/deceased Bhagat Singh (Ex.PW-2/A), on which FIR was got registered. He also recorded the statement of the eye-witness Naveen. Bhagat Singh and Naveen handed over their bloodstained clothes to him, which were seized vide seizure memo Ex.PW-2/B and Ex.PW-8/A respectively. Thereafter, he returned to the spot with the complainant

Bhagat Singh. He made search of the accused persons and the appellant was found at his house at around 3-3.15 AM. He arrested the appellant vide arrest memo (Ex.PW-8/E) and recorded his disclosure statement (Ex.PW-8/G). The appellant led him to the first floor of his H. No. 201 from where one gun, seven cartridges were recovered from above one almirah and seven cartridges were recovered from under the mattress. He again stated that one live cartridge and one fired cartridge were lying on the roof of the house of the appellant and that there was one room on the said roof from where one gun was recovered from above the almirah. All these articles were seized and taken into possession. In his absence, the crime team had inspected the spot. On 30th September, 2013 he received the information about death of the deceased from Medanta Hospital vide DD No.22A (Ex.PW-21/D) after which, the dead body was shifted to mortuary at Sanjay Gandhi Hospital and the same was sent for post-mortem examination. The body was identified by Bhagat Singh and Naveen Kumar (Ex.PW-2/X and Ex.PW-21/F respectively) and after the post-mortem examination the body was handed over to them.

13. Insp. Manoj Kumar (PW-20) deposed that on 1st October, 2013 the investigation of the present case was assigned to him. On 12th November, 2013, accused Amit Kumar and Dev Karan had surrendered before the Court who were formally arrested vide arrest memo Ex.PW-20/A and B respectively. Thereafter on 19th December, 2013, Saroj and Suresh also surrendered before the Court who were formally arrested vide arrest memos Ex.PW-19/A and Ex.PW-19/B respectively. Accordingly, charge-sheet against the accused persons Chander Bhan, Amit, Dev Karan, Saroj and Suresh was filed before the Court and on 27th February, 2014, Om Prakash

was formally arrested as he was on anticipatory bail vide arrest memo Ex.PW-20/C and after completion of investigation qua Om Prakash, supplementary charge-sheet was filed. In his cross-examination he stated that he did not visit the hospital on the day of occurrence however, he visited the place of incident on the intervening night of 25th -26th September, 2013 at about 11.00 PM.

14. Insp. Mahesh Kumar (PW-18) deposed that on 23rd November, 2013, at the instance of Bhagat Singh, SI Ranbir Kumar and Insp. Manoj Kumar, he took rough notes and measurements of the spot consequent to which, he prepared the scaled site plan (Ex.PW-18/A).

15. Babita Gulia (PW-4) conducted the fire arm examination and opined that the 12 bore SBBL gun was a 'firearm' as per the Arms Act and was found to be in working order. The fired cartridge case recovered was opined to have been fired from the said 12 bore SBBL gun and not from any other firearm. Further the live cartridge recovered was 'Ammunition' as defined in the Arms Act.

16. Naresh Kumar (PW-16) prepared the FSL biology report (Ex.PW-16/A) and found blood present on the clothes of the Bhagat Singh (Ex.3a and 3b) and Naveen Kumar (Ex.4a and 4b). As per the serological report (Ex.PW-16/B) blood group found on the clothes of the two eye-witnesses Bhagat Singh and Naveen Kumar tallied with the blood group of the deceased Pawan.

17. As per the MLC No.1871 (Ex.PW-3/A) prepared by Dr. Gurbachan Singh (PW-3), the deceased was got admitted by his father Bhagat Singh at about 10.45 PM on 25th September, 2013. The said MLC recorded, alleged history of gunshot injury at about 9.00 PM at Baprola village as informed by

the father followed by facial injuries, neck injuries and chest injuries. On examination, multiple pellet injuries over face and upper chest along with scalp and *pinna* were found as also swelling over right side of the neck with blood oozing was found. The nature of injury was opined to be dangerous.

18. In his statement under Section 313 Code of Criminal Procedure, 1972 (“Cr.P.C.”), the appellant stated that the land was distributed among the legal heirs as per their family settlement and that he and his brother Om Prakash had constructed their houses at point ‘X’ and ‘B’ respectively as shown in the site plan (Ex.PW-2/C). The land of his cousin Jeet Singh was behind his land and there was a passage of about 23 feet between his house and the land of Karan Singh and the land of Bhagat Singh falls behind the land of Karan Singh. He further stated that on 25th September, 2013 he was not present at his residence rather at about 12 noon, he along with Om Prakash, Saroj and Suresh had gone to Village Rasoi, District Sonipat for Shrad ceremony of his brother-in-law Satish which was to be held on 26th September, 2013 at about 8.00 AM. His daughter Mamta and daughter-in-law Monika along with their children were at his house while Amit and Dev Karan had gone to Najafgarh. He further stated that the present case was based on a false FIR registered against them at the behest of Bhagat Singh and Bharat Singh, MLA of Najafgarh and police officials. He further stated that he was innocent and that he was not at his residence and that on a later time he came to know that the deceased along with 20-25 persons came to his residence armed with firearms and started abusing the female members of his family. When the gate of his house was not opened, one companion of deceased fired in the air and the pellet stuck against the electric pole

which was installed in front of his house and after rebound the pellet stuck the deceased.

19. Mamta Solanki (DW-3), daughter of the appellant stated that in the vacant portion of their land, they have constructed two rooms and a separate gate was installed by them towards the passage of 20 feet. Two-three days prior to the incident the gate was demolished by her uncle Bhagat Singh and aunt Rajbala. On 25th September, 2013, her uncle Bhagat Singh had come to her house and after serving tea she went inside but heard noises of quarrel between Bhagat Singh and her father after which Bhagat Singh left her house and her father made a call at number 100 but no action was taken by the police. At about 11.30 AM she went to her college and in the meantime, her mother, father, uncle/*tau* Om Prakash and *tai* Suresh left the house for her Mama's house at village Rasoi, District Sonipat for attending the *Shradh* ceremony of her Mama to be held on the next day. At about 9.30 PM the deceased along with his 20-25 friends came there and started abusing in loud voice and they were knocking on the door of the house. On seeing the crowd, she did not open the door and from inside the house she informed them that no adult member was inside the house and requested them to come back tomorrow. Despite her request, the deceased and his friends did not leave and started firing. Her *Bhabhi* made a call at number 100, but the PCR did not arrive and in the meantime, she heard the noise of "*goli lag gayi goli lag gai*". She went to the roof of the house and saw one person lying in the street in an injured condition and that the rest had left from there. Thereafter her uncle Bhagat Singh came in the car and took away the injured. Two police officials came inside the house and she narrated the entire incident to them. There was a gun hanging inside the *mandir* room

situated in the ground floor which was taken away by the police along with one packet of cartridge and at the time of taking away the gun, the police officials had fired one cartridge from the said gun. She tried to inform her father, however, his mobile phone got misplaced two-three days back and the phone of her *tau* was out of network coverage area. Thereafter, on 26th September, 2013, when her father returned to the house, she narrated the entire incident to him on which, her father went to the police station for lodging the report, but he did not return from the police station. In her cross-examination, she stated to have seen the person firing the gunshot in the air towards the sky. She further stated that the mandir in the house was at the rear portion of her house and was visible from the main gate of the house. Her father had lodged the missing complaint of his mobile phone, her mother and her *tai* did not have mobile phone and there was no landline connection at the house of her Mama at village Rasoi.

20. As regards the motive even from the cross-examination of Bhagat Singh (PW-2), father of the deceased and the evidence of Mamta Solanki (DW-3), it is clear that the case of the appellant is also that there was a joint holding of the land about 4-4.5 acres which had been partitioned by mutual understanding and the shares were defined. However, the dispute with regard to the passage continued between the families. According to the appellant, there was no passage whereas Bhagat Singh claimed a passage. Further there was objection to the installation of gate and that the gate was installed unauthorizedly as per Chander Bhan. The motive being evident from the statement of DW-3 itself, contention of learned counsel for appellant that no motive has been proved by the prosecution deserves to be rejected.

21. The case of the appellant as per the suggestions is that Bhagat Singh's son with other associates were the aggressors who came to their house, however, no injury was found on any of the persons from the side of the appellant. Bhagat Singh was suggested that on the day of incident Pawan had taken 15-20 hired goons to the house of Chander Bhan to put pressure on him to give the land for the purposes of creating a colony and that they were having weapons like *lathis*, *dandas* and firearms and banged the house of Chander Bhan. However, in view of no injury being inflicted by either *lathis*, *dandas* or even by firearms to the side of the appellant, it cannot be held that Pawan, the deceased, was the aggressor with the other hired goons.

22. Second defence of the appellant was that he was not at home and when Pawan and others banged the door, he was told by the ladies of the house of Chander Bhan from the roof that he was not at the house. A suggestion has also been given to Bhagat Singh that when Pawan and his associates reached the gates were not opened, so they tried to come to the terrace of Chander Bhan's house and in the process one of the associates of Pawan fired in the air which stuck to the electric pole and the pellet hit Pawan who was standing near the electric pole. This suggestion has been made in view of the cross-examination conducted from the post-mortem doctor who stated that the bullet injuries are possible as a result of rebound shot of firearm as well. However, the fact of the matter is that from the terrace an empty cartridge case which belonged to the appellant's licensed revolver was recovered. Further, an associate of Pawan could not have fired a shot from the service revolver of the appellant. In respect of the claim of empty cartridge from the service revolver of the appellant being found, the appellant in his statement under Section 313 Cr.P.C. took the plea that the

gun inside the mandir room which was situated in the ground floor was hanging which was taken away by the police along with one packet of cartridge and while leaving they fired one shot with the result an empty cartridge case was found at the spot. The suggestion in this regard given to Insp. Manoj Kumar (PW-20) and SI Ranbir Kumar Sharma (PW-21) was duly denied. Further as per the ballistic expert report (Ex.PW-4/A), the cartridge case and the cartridge were fired from the 12 bore SBBL gun marked W/1 which was a licensed gun of the appellant. Learned counsel for the appellant has also contended that the defence of the appellant taken in the statement under Section 313 Cr.P.C. as also built up by the evidence of DW-3 that the police fired leaving behind the cartridge case is also belied by the crime team report (Ex.PW-5/A). The crime team examined the spot on 25th September, 2013 itself from 11.00 PM to 11.40 PM and as per its report, blood/ bloodstains were found in the street in front of the house of Om Prakash, son of Bhim Singh, in the gali at village Baprola, and one live cartridge of gun KF-12 and one empty cartridge of the same gun were found on the roof of the appellant's house.

23. Case of the prosecution is based on the evidence of two eye-witnesses Bhagat Singh, father of the deceased and Naveen Kumar. Both of them have stood the test of cross-examination and clearly stated that it was the appellant who had fired the shot. Challenge is laid to the testimony of the eye-witnesses on the ground that they immediately did not take the deceased to the nearby hospital but took him to Medanta Hospital which was far off and in view of the delay in the treatment Pawan died however, no such question was put to the post-mortem doctor as to whether the death was due to delay in his treatment.

24. In the alternative, learned counsel for the appellant has also contended that at best an offence under Section 304 IPC is made out and the appellant be released on the period already undergone. From the prosecution case, it clearly emerges that in view of the disputes between the parties and having agreed to sit in the evening for discussing the issue, Bhagat Singh along with his son Pawan, the deceased, and Naveen had gone to the house of the appellant when shot was fired from the licensed weapon of the appellant while standing on the terrace and hence, it cannot be said that the act of the appellant was not with the intention to cause death of Pawan. Hon'ble Supreme Court in the decision reported as (2003) 9 SCC 60 Hari Prasad v. State of U.P. held the appellant therein guilty of murder by gunshot injury on the abdomen of the deceased therein, pursuant to an altercation between them, and upheld his conviction under Section 302 IPC. Hence, this Court finds no merit in the plea that the offence be converted to one under Section 304 IPC.

25. Consequently, the appeal is dismissed.

26. Judgment be uploaded on the website of this Court and a copy of the same be also sent to the Superintendent, Jail for intimation to the appellant and updation of the record.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

APRIL 11, 2023/‘vn’