

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No. 334 of 1995

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1. Raj Narayan Singh son of Ram Sewak Singh, resident of Maharaja Hata, Katira, Tribhuwani Kothi, P.W. Nawadah, District-Bhojpur
 2. Shakuntala Devi wife of Raj Narayan Singh, resident of Maharaja Hata, Katira, Tribhuwani Kothi, P.S. Nawadah, District-Bhojpur

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

Appearance:

For the Appellant/s	:	Mr. Baxi S.R.P. Sinha, Sr. Advocate
		Mr. Mrigendra Pratap Singh, Advocate
For the Informant	:	Mr. Prashant Kumar, Advocate
For the State	:	Smt. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 19-08-2025

The present appeal has been preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') against the judgment of conviction and order of sentence dated 16.08.1995 by the learned 9th Additional Sessions Judge, Ara in Sessions Trial No. 67 of 1994 (arising out of Arrah Nawada P.S. Case No. 144 of 1993), whereby and whereunder the appellant no. 1 has been convicted for the offence under Section 302 of the Indian Penal Code and



Section 27 of the Arms Act while the appellant no. 2 has been convicted under Section 201 of the Indian Penal Code. By the order of sentence dated 16.08.1995, the appellant no. 1 has been sentenced to undergo rigorous imprisonment for life under Section 302 of the IPC with fine of Rs. 1,000/- and in default thereof he has been further directed to undergo simple imprisonment for one month as also he has been sentenced to undergo rigorous imprisonment for one year under Section 27 of the Arms Act. Both the sentences have been directed to run concurrently. As far as appellant no. 2 is concerned, she has been sentenced to undergo rigorous imprisonment for 3 years under Section 201 of the IPC with fine of Rs. 100/- and in default thereof she has been further directed to undergo simple imprisonment for 7 days.

2. The short facts of the case are that the fardbeyan of Smt. Dharamsheela Devi, wife of the deceased Ajab Singh (brother of the appellant no. 1) was recorded by the Sub-Inspector of Police Shrikant Upadhyaya, P.S. Arrah Nawada, District-Bhojpur on 10.09.1993 at Tribhuani Kothi at about 15:00 hours. In the fardbeyan, the informant has stated that on 10.09.1993 at about 02:00 p.m. in the day time her father-in-law said that he would get registry done in the name of both the brothers upon which



husband of the informant said that on the ground floor towards the southern side there are nine shops, hence the dispute should be resolved here itself otherwise it will travel to the Court, whereupon quarrel started taking place. The brother-in-law of the informant, namely Raj Narayan Singh (appellant no. 1) said that under no circumstances he would give the shops situated towards the south side since he has got them constructed by his own money and then on being agitated, he gave a fist blow on the husband of the informant. Thereafter, the husband of the informant, upon freeing himself from the grip of the appellant no. 1, went to the Court where her father-in-law had gone for seeking opinion regarding partition from the advocate. The husband of the informant had then returned back alongwith her father-in-law and in his presence, the brother-in-law of the informant, i.e. Raj Narayan Singh (appellant no. 1) said that under no circumstances he would give the shops situated on the ground floor towards the southern side, even if he has to engage in bloodshed. Thereafter, the husband of the informant said that the partition should be done properly and he should at least get two shops out of the nine shops, whereafter the dispute escalated and her younger sister-in-law, namely Shakuntala Devi (appellant no. 2) started shouting and saying that even his



father had got no courage to take any shop from them.

3. It has been further stated by the informant that she had then come out of her room to quell the dispute, when the brother-in-law of the informant, namely Raj Narayan Singh, in a fit of anger had gone to his room and brought the licensed gun of her father-in-law which had been kept in the room of the appellant no. 1 by his father and then he had put the gun near the neck of the husband of the informant, namely Ajab Singh and fired gun shot with the intention to kill him. As soon as the husband of the informant was hit by gunshot, he fell down and got smeared with blood. Thereafter, the sister-in-law of the informant, namely Shakuntala Devi had brought a bucket full of water and with the intention of erasing the evidence started washing the blood, while the son of the informant and one person from downstairs had taken the husband of the informant to hospital in an injured condition. The fardbeyan of the informant was read over to her, which she had heard and upon finding the same to be correct, she had put her signature over the same. On the basis of the said fardbeyan of the informant, a formal FIR bearing Arrah Nawada P.S. Case No. 144 of 1993 was registered against the aforesaid two appellants under Sections 307/34 of the Indian Penal Code and Section 27 of the



Arms Act. Subsequently, upon the death of the husband of the informant, Section 302 of the IPC was added vide order dated 11.09.1993. The police had investigated the case and after finding the incident to be true had filed chargesheet dated 30.09.1993 under Sections 302 and 307/34 of the Indian Penal Code and Section 27 of the Arms Act against the aforesaid two appellants. The learned Trial Judge had then taken cognizance of the offence under Sections 302 and 307/34 of the Indian Penal Code and Section 27 of the Arms act against the aforesaid two appellants on 14.10.1993. The case being triable by the Court of Sessions was committed to the Court of Sessions vide order dated 22.02.1994. The learned Trial Court had then framed charges on 23.08.1994 under Section 302 of the Indian Penal Code and Section 27 of the Arms Act against the appellant no. 1 and under Section 201 of the Indian Penal Code against the appellant no. 2.

4. The prosecution had examined altogether six witnesses. While PW-1 Dharamsheela Devi is the informant and wife of the deceased, PW-2 Sanjay Kumar Singh @ Munna Singh is son of the informant and both claim to be eye-witness to the said occurrence, PW-3 Dr. Sushil Kumar Rungta has conducted the postmortem examination of the deceased, PW-4 Shatrughan Sah



is a Constable & a formal witness while PW-5 Shishir Kumar is Sergeant Major in the Bihar Police who has furnished the ballistic report of the gun used for killing the deceased & PW-6 Shrikant Upadhyaya is the Investigating Officer of the present case.

5. The learned senior counsel for the appellants Sri Baxi S.R.P. Sinha has contended that the son of the informant had vanished for two days and his statement was recorded only on 12.09.1993, hence the suggestion given by the defence at the time of cross-examining the prosecution witnesses to the effect that actually it was PW-2 who had fired gun shot and the same had though missed hitting the appellant no. 1 but had mistakenly hit the deceased, hence he was being saved by the members of the prosecution side as also by the father-in-law of the informant, as such his name does not appear anywhere much less in the inquest report. In fact, PW-2 was also not permitted to go near the dead body at the time the same was being taken for postmortem examination. It is next submitted that though the gun used for killing the deceased was seized but it appears that no seizure list was prepared, nonetheless the same was sent to one Sergeant Major for furnishing of ballistic report, however the same was not sent to the ballistic expert which has caused prejudice to the defence. Moreover, the gun was sent for



ballistic examination after a delay of 14 days and that too to a non-expert which also creates doubt about the veracity of the prosecution case. In fact, no seizure list has been exhibited which also creates a doubt about the mode and manner of occurrence and further the gun was not sent for finger print examination which would have actually connected the perpetrator of crime with the gun.

6. The learned senior counsel for the appellants has contended that as far as the postmortem report is concerned, the injuries found therein by the doctor would show that the mode and manner of firing from the gun by the appellant no. 1 does not stand substantiated inasmuch as the doctor has not found presence of any carbon or gunpowder on the injuries sustained by gunshot firing. Alternatively, reference has been made to that portion of the evidence of PW-1 and PW-2 wherein they have stated that in a fit of rage, the appellant no. 1 had gone to his room and brought the licensed gun of his father and shot the deceased. Thus, it is submitted that admittedly the incident had taken place at the spur of the moment in a heat of passion, hence alternatively it is prayed that the present case would be a case which would not fall under Section 302 of the Indian Penal Code but would fall under Part-II of Section 304 of the Indian



Penal Code, thus it is prayed that considering the factum of the appellants having suffered the rigors of trial for the past 30 years a sympathetic view be taken and the sentence be reduced. Lastly, it is submitted by the learned senior counsel for the appellants that as far as appellant no. 2 is concerned, the evidence on record would show that she has got no role to play, whatsoever in the alleged incident and the allegation regarding her having attempted to erase the evidence is also superficial in nature, inasmuch as she was merely wiping the floor which is a natural conduct of any lady.

7. *Per contra*, the learned counsel for the informant Sri Prashant Kumar has submitted that the suggestion put by the defence to PW-1 and PW-2, while cross-examining them contains admission regarding the date, time, place, mode and manner of occurrence, which is apparent from paragraph no. 27 of the evidence of PW-1 and paragraph no. 24 of evidence of PW-2. In this connection, reference has been made to a judgment rendered by the Hon'ble Apex Court in the case of ***Balu Sudam Khalde & Anr. vs. State of Maharashtra***, reported in ***AIR 2023 SC 1736***, paragraphs no. 33 to 36, 38 and 39 whereof are reproduced herein below:-

“33. *We are of the view from the aforesaid that the*



suggestions put by the defence counsel in the cross-examination of the eyewitnesses establishes the presence of PW 1 Asgar Shaikh at the scene of offence and the factum of assault could also be said to have been admitted. The reply to the suggestions answers the submission canvassed by the learned counsel for the appellants that PW 1 Asgar Shaikh should not be believed or relied upon as there is nothing on record to indicate that he was an injured eyewitness. The defence could be said to have admitted the presence of PW 1 Asgar Shaikh. When the aforesaid part of the cross-examination of PW 1 Asgar Shaikh was brought to the notice of the defence counsel, he submitted that a suggestion put by defence counsel to a witness in his cross-examination has no evidentiary value and even if the same is incriminating in any manner would not bind the accused as the defence counsel has no implied authority to admit the guilt of the facts incriminating the accused.

34. According to the learned counsel such suggestions could be a part of the defence strategy to impeach the credibility of the witness. The proof of guilt required of the prosecution does not depend on the satisfaction made to a witness.35. In Tarun Bora v. State of Assam [Tarun Bora v. State of Assam, (2002) 7 SCC 39 : 2002 SCC (Cri) 1568] , a three-Judge Bench of this Court was dealing with an appeal against the order passed by the Designated Court, Guwahati, in TADA Sessions case wherein the appellant was convicted under Section 365IPC read with Sections 3(1) and 3(5) of the Terrorist and Disruptive Activities (Prevention) Act, 1987.

35. In Tarun Bora v. State of Assam [Tarun Bora v. State of Assam, (2002) 7 SCC 39 : 2002 SCC (Cri) 1568] , a three-Judge Bench of this Court was dealing with an appeal against the order passed by the Designated Court, Guwahati, in TADA Sessions case wherein the appellant was convicted under Section 365IPC read with Sections 3(1) and 3(5) of the Terrorist and Disruptive Activities (Prevention) Act, 1987.

36. In Tarun Bora case [Tarun Bora v. State of Assam, (2002) 7 SCC 39], this Court, while considering the evidence on record took note of a suggestion which was put to one of the witnesses and considering the reply given by the witness to the suggestion put by the accused, arrived at the conclusion that



the presence of the accused was admitted. We quote with profit the following observations made by this Court in paras 15, 16 and 17, respectively, as under:

“15. The witness further stated that during the assault, the assailant accused him of giving information to the army about the United Liberation Front of Assam (ULFA). He further stated that on the third night he was carried away blindfolded on a bicycle to a different place and when his eyes were unfolded, he could see his younger brother-Kumud Kakati (PW 2) and his wife Smt Prema Kakati (PW 3). The place was Duliapather, which is about 6-7 km away from his Village Sakrahi. The witness identified the appellant Tarun Bora and stated that it is he who took him in an Ambassador car from the residence of Nandeswar Bora on the date of the incident.

16. In cross-examination the witness stated as under:

‘Accused Tarun Bora did not blind my eyes nor he assaulted me.’

17. This part of cross-examination is suggestive of the presence of accused-Tarun Bora in the whole episode. This will clearly suggest the presence of the accused Tarun Bora as admitted. The only denial is that the accused did not participate in blind-folding the eyes of the witness nor assaulted him.”

38. Thus, from the above it is evident that the suggestion made by the defence counsel to a witness in the cross-examination if found to be incriminating in nature in any manner would definitely bind the accused and the accused cannot get away on the plea that his counsel had no implied authority to make suggestions in the nature of admissions against his client.

39. Any concession or admission of a fact by a defence counsel would definitely be binding on his client, except the concession on the point of law. As a legal proposition we cannot agree with the submission canvassed on behalf of the appellants that an answer by a witness to a suggestion made by the defence counsel in the cross-examination does not deserve any value or utility if it incriminates the accused in any manner.”

It is thus submitted that a suggestion put by a defence



counsel to a witness in his cross-examination has got no evidentiary value and even if the same is incriminating in any manner, the same would not bind the parties.

8. The learned counsel for the informant has submitted that as far as the contention of the learned senior counsel for the appellants to the effect that PW-2 was missing for two days is concerned, no evidence has been brought on record to substantiate the said fact, hence the same is of no value. It is also submitted that the natural conduct of the appellants is absent and the medical evidence definitely corroborates the ocular evidence. It is next contended that as far as non-preparation of seizure-list of the gun by which the deceased was killed is concerned, it is a settled law that for convicting an accused, recovery of weapon used in the commission of offence is not a *sine qua non* and in case sufficient ocular evidence is available on record to connect the perpetrator of crime with the crime, the non-recovery of weapon becomes insignificant. Reference has been made to a judgment rendered by the Hon'ble Apex Court in the case of ***Rakesh & Anr. vs. State of Uttar Pradesh & Anr.***, reported in ***(2021)7 SCC 188***, paragraph no. 12 whereof is reproduced herein below:-

“12. Now so far as the submission on behalf of the



accused that as per the ballistic report the bullet found does not match with the firearm/gun recovered and therefore the use of gun as alleged is doubtful and therefore benefit of doubt must be given to the accused is concerned, the aforesaid cannot be accepted. At the most, it can be said that the gun recovered by the police from the accused may not have been used for killing and therefore the recovery of the actual weapon used for killing can be ignored and it is to be treated as if there is no recovery at all. For convicting an accused recovery of the weapon used in commission of offence is not a sine qua non. PW 1 and PW 2, as observed hereinabove, are reliable and trustworthy eyewitnesses to the incident and they have specifically stated that A-1 Rakesh fired from the gun and the deceased sustained injury. The injury by the gun has been established and proved from the medical evidence and the deposition of Dr Santosh Kumar, PW 5. Injury 1 is by gunshot. Therefore, it is not possible to reject the credible ocular evidence of PW 1 and PW 2 — eyewitnesses who witnessed the shooting. It has no bearing on credibility of deposition of PW 1 and PW 2 that A-1 shot deceased with a gun, particularly as it is corroborated by bullet in the body and also stands corroborated by the testimony of PW 2 and PW 5. Therefore, merely because the ballistic report shows that the bullet recovered does not match with the gun recovered, it is not possible to reject the credible and reliable deposition of PW 1 and PW 2.”

9. The learned counsel for the informant has thus submitted that in case of unimpeachable oral evidence which stands corroborated by medical evidence, non-recovery of the weapon does not materially affect the case of the prosecution and any omission on the part of the Investigating Officer cannot go against the prosecution.



10. In this regard, reference has also been made to a judgment rendered by the Hon'ble Apex Court in the case of ***Nankaunoo vs. State of Uttar Pradesh***, reported in ***(2016) 3 SCC 317***; paragraph no. 9 whereof is reproduced herein below:-

“9. The learned counsel for the appellant contended that the courts below failed to take note of the fact that the alleged weapon “country-made pistol” was never recovered by the investigating officer and in the absence of any clear connection between the weapon used for crime and ballistic report and resultant injury, the prosecution cannot be said to have established the guilt of the appellant. In the light of unimpeachable oral evidence which is amply corroborated by the medical evidence, non-recovery of “country-made pistol” does not materially affect the case of the prosecution. In a case of this nature, any omission on the part of the investigating officer cannot go against the prosecution case. Story of the prosecution is to be examined dehors such omission by the investigating agency. Otherwise, it would shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice.”

11. The learned counsel for the informant has next referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Karnel Singh vs. State of M.P.***, reported in ***AIR 1995 SC 2472***, paragraphs no. 4 to 6 whereof are reproduced herein below:-



“4. We have very carefully scrutinized the evidence having regard to the fact that (PW 6) the investigating officer had not taken the care expected of him. He did not record the statements of the two witnesses nor did he refer to the attachment of the ‘chaddi’ in his oral evidence. That was a very vital piece of evidence to which little or no attention was paid. If the seizure of that article was properly proved, the article with semen stains would have lent strong corroboration to the evidence of the prosecutrix. There is no doubt that the investigation was casual and defective. But despite these deficiencies both the courts below have recorded a conviction. The question is : are they right?

5. Notwithstanding our unhappiness regarding the nature of investigation, we have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. Any investigating officer, in fairness to the prosecutrix as well as the accused, would have recorded the statements of the two witnesses and would have drawn up a proper seizure-memo in regard to the ‘chaddi’. That is the reason why we have said that the investigation was slipshod and defective.

6. We must admit that the defective investigation gave us some anxious moments and we were at first blush inclined to think that the accused was prejudiced. But on closer scrutiny we have reason to think that the loopholes in the investigation were left to help the accused at the cost of the poor prosecutrix, a labourer. To acquit solely on that ground would be adding insult to injury.

12. Lastly, it is submitted by the learned counsel for the informant that the present case would fall under Section 300 Clause-Thirdly. At this juncture, it may be relevant to reproduce Section 300 of the Indian Penal Code herein below:-



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

Secondly- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

Thirdly- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

Fourthly- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

“Exception 1- When culpable homicide is not murder- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:-

First- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing. or doing harm to any person.

Secondly- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly- That the provocation is not given by anything done in the lawful exercise of the right of private defense.

Explanation- Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defense of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defense without premeditation, and without any intention of doing more harm than is necessary



for the purpose of such defense.

Exception 3- Culpable homicide is not murder if the offender, being a public servant or aiding. a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation- It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5- Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”

Thus, it is submitted that there is no question of the present case falling either under Part-I or Part-II of Section 304 of the Indian Penal Code.

13. The learned A.P.P. for the State Ms. Shashi Bala Verma, has adopted the arguments advanced by the learned counsel for the informant, however she has added that the present case would definitely fall under Section 300 Clause-thirdly and has also submitted that motive was definitely present in the present case inasmuch as dispute was existing with regard to the partition of the shops in question. Thus, it is submitted that the judgment of conviction and order of sentence do not require any



interference by this Court.

14. Besides hearing the learned counsel for the parties, we have minutely perused both the evidence i.e. oral and documentary. Before proceeding further, it is necessary to discuss the evidence.

15. PW-1 Smt. Dharamsheela Devi (wife of the deceased and informant of the present case) has stated in her evidence that her father-in-law has got five sons out of which two are Ajab Singh (deceased) and Raj Narayan Singh (appellant no. 1). She has also stated that her in-law's property is spread over Calcutta, Patna, Tribhuani and Ara. The property situated at Calcutta has been given to three sons, namely Janakdev Singh, Vishwanath Singh and Uday Singh. She has also described the other properties belonging to her father-in-law and has stated about the shops situated in the house at Tribhuani. She has further stated that dispute between her deceased husband and the appellant no. 1 was existing from before with regard to the shops situated at the southern side on the ground floor of the house situated at Tribhuani. In paragraph no. 2 of her examination-in-chief, she has stated that the occurrence dates back to 10.09.1993 and on that day her father-in-law had called her husband and the appellant no. 1 and had told them that he



would get registry done in their names so that the dispute in-between them is finished once and for all and then the father-in-law of PW-1 had gone to an advocate at the Court for seeking opinion at about 11:00 a.m. and alongwith him the son of the informant, namely Sanjay Kumar Singh @ Munna Singh had also gone. At the time when the father-in-law of the informant had come from the Court, quarrel had taken place in between her husband and the accused pertaining to the shops in question and then the appellant no. 1 had said that apart from three shops, deceased would not get anything else, whereafter the appellant no. 1 had given a fist blow to the deceased. The husband of the informant had then gone to the Court to meet her father-in-law, whereafter her father-in-law, son and husband had returned back to home at about 02:00 p.m. in the afternoon and after coming from the Court as soon as they had climbed on the third floor of the house, the appellant no. 1 had told her husband that he would not give any shop out of the said nine shops, whereupon the husband of the informant told her father-in-law to carry out partition of the property, where upon the appellants started shouting loudly and said that nobody has the courage to take even one shop and then the appellant no. 2 had signaled, leading to the appellant no. 1 going to his room and bringing the



licensed gun of her father-in-law, which he had put near the neck of the deceased and had then fired a gunshot resulting in the husband of the informant being inflicted with gunshot, resulting in him falling down and becoming smeared with blood. The appellant no. 1 had then left the gun in his room and fled away. Thereafter, the son of the informant & two unknown persons, who had come from downstairs had taken the deceased to Sadar Hospital where he died during the course of treatment.

16. PW-1 has next stated that the Officer-in-Charge of Arrah Nawada Police Station had come to the place of occurrence and upon seeing the Officer-in-Charge coming there, the appellant no. 2 had brought water in a bucket and had started washing the blood which had fallen down, which was witnessed by the Officer-in-Charge and the police personnel, who had come alongwith him and then the Officer-in-Charge had recorded the statement of the informant which was read over to her and upon finding the same to be correct, she had put her signature and the same was marked as Exhibit-1. PW-1 has further stated that her son and father-in-law had witnessed the occurrence besides her. PW-1 has also stated that her father-in-law has now sided with the accused Raj Narayan Singh and is pressurizing her to compromise the matter. She had recognized the appellant no. 1



standing in the dock and has stated that she can also recognize the appellant no. 2 upon seeing her. PW-1 has also stated that the police had seized the water mixed with blood from the place of occurrence. In paragraph no. 4 of her cross-examination, PW-1 has described the place of occurrence. In para no. 5 of her cross-examination, PW-1 has stated that till the time Ajab Singh had remained at the place of occurrence, in an injured condition, no outsider had come and she cannot say as to after how much time the injured was taken to the hospital. After her husband was taken to the hospital, neither anybody had come to her house nor any tenant or any person from the market had come at the place of occurrence but after 45 minutes of her husband being taken to the hospital, the police had arrived at the place of occurrence and in between she had not talked to anyone, however she cannot give the description of the two outsiders who had taken her husband to the hospital alongwith her son.

17. In paragraph no. 8 of her cross-examination, PW-1 has stated that the appellant no. 1 was quarreling since 15 days before the occurrence had taken place and the appellant no. 1 was forcefully taking the rent of the said three shops in dispute since about one year. PW-1 has denied the suggestion that six shops situated south of the staircase and facing south have been



constructed by the appellant no. 1. In para no. 11 of her cross-examination, PW-1 has stated that on the date of occurrence quarrel had taken place twice in-between her husband and the accused. Firstly, quarrel had taken place in the veranda of the third floor of the house in question, immediately after her husband had eaten food and the same had continued for 2-4 minutes and during the course thereof the appellant no. 1 had inflicted a fist blow on her husband resulting in him sustaining injury in his stomach and the clothes of her husband had also got torn, whereafter her husband had gone to call her father-in-law and the witnesses to the said quarrel are her husband, appellant no. 1, his wife besides her. She has also stated that when her husband had gone to call her father-in-law, she had not talked with anyone and by that time she had also eaten food. In paragraph no. 12 of her cross-examination, PW-1 has stated that after returning back from the Court, her husband, her father-in-law and her son had come upstairs but no other person had come there. In paragraph no. 13 of her cross-examination, PW-1 has stated that at the time when her husband had gone to call her father-in-law, she was in her room and after hearing the voice of her father-in-law, her husband and her son on the third floor of the house, she had come out of her room and at the time of the



incident all were at the veranda. PW-1 has also stated that it is not a fact that her father-in-law had gone into the room of the appellant no. 1. She has also stated that when her husband and appellant no. 1 were quarreling, she was also present there.

18. In paragraph no. 14 of her cross-examination, PW-1 has stated that at the time when the appellant no. 1 had fired gun shots, he was at a distance of 1-1½ steps towards the southern side of her husband. PW-1 has also stated that after her husband was shot, blood had started oozing out resulting in her and her son's clothes being stained with blood and blood had also fallen on the staircase. In paragraph no. 15 of her cross-examination, PW-1 has stated that the appellant no. 2 had started washing the veranda and some water had fallen down on the staircase. In paragraph no. 17 of her cross-examination, PW-1 has stated that the appellant no. 1 had fled away in her presence after firing gun shots, however neither her father-in-law nor her son had made any attempt to catch him because they had got engaged in taking care of the deceased. PW-1 had shown her blood-stained clothes as also those of her father-in-law to the Officer-in-Charge. In paragraph no. 19 of her cross-examination, PW-1 has stated that on the next day at about 10:00-11:00 a.m. she had met her son. She had gone for cremation of the dead body at about 04:00



p.m. Her son had talked to her and then gone to cremate the dead body and had returned in the night at about 01:30-02:00 after cremating the dead body. In paragraph no. 20 of her cross-examination, PW-1 has stated that she does not remember as to whether she had disclosed before the Officer-in-Charge that her son had witnessed the occurrence. In paragraph no. 21 of her cross-examination, PW-1 has stated that after 2-3 minutes of returning back of her husband, her father-in-law and her son from the Court, quarrel had taken place, whereafter firing had also taken place. The quarrel had taken place at the veranda, however during the quarrel nobody had assaulted anybody, no outsider had come at the time of quarrel and at that time the appellant no. 1 had not assaulted her husband.

19. In paragraph no. 24 of her cross-examination, PW-1 has stated that when the appellant no. 1 had brought the gun from his room nobody could flee away because there was no time to run away and he had brought the gun after loading the same with bullet. The police had recovered the gun from the room of the appellant no. 1, however she cannot say as to where the gun was kept. In paragraph no. 25 of her cross-examination, she has stated that when her father-in-law had given power of attorney, she came to know that her father-in-law has sided with the



accused, however she has not given any information about the same either to the Superintendent of Police or before the Court and at the time of execution of the power of attorney, the appellant no. 1 was in jail. She has also stated that she cannot say as to how many days prior to today she got the power of attorney. In paragraph no. 27 of her cross-examination, PW-1 has denied the suggestion that after returning from the Court her husband and son had quarreled with the appellant no. 1 and at that time appellant no. 1 had given a fist blow to her husband and in fit of anger her son Sanjay Kumar Singh @ Munna Singh had fired on the appellant no. 1 which had hit her husband. She has also denied the fact that on account of the said fact she had not given the name of her son as a witness in the fardbeyan and for the said reason Sanjay Kumar Singh was absconding for two days. She has also denied the fact that since her father-in-law Ram Sewak Singh was not ready to say the said untrue fact, she has stated that her father-in-law had sided with the accused.

20. PW-2 Sanjay Kumar Singh @ Munna Singh has stated that Ram Sewak Singh is his grand-father. He has described the genealogy of his family and said that the property belongs to his grand-father. In paragraph no. 2 of his examination-in-chief, PW-2 has stated that his father was killed on 10.09.1993 at



about 02:00 p.m. in the afternoon and his grand-father had come from Calcutta, three days prior to the said killing. On the date of occurrence at about 11:00 a.m. in the day time, he alongwith his grand-father had gone to the Court to consult a lawyer for the purposes of partition. At about 12:30 in the day time, the father of PW-2 had come to the Court and told his grand-father that on account of partition of the shops he had a quarrel with the appellant no. 1 and he had hit him by fist, whereafter grand-father of PW-2, his father and PW-2 had returned to the house by rickshaw at about 02:00 p.m. in the afternoon. Thereafter, quarrel started taking place in-between the father of PW-2 and appellant no. 1, Raj Narayan Singh, where appellant no. 2 Shakuntala Devi was also present and she was also shouting and saying that she would not give any shop out of the said nine shops and then the appellant no. 1 said that he would not get more than three shops. During the course of argument, appellant no. 2 Shakuntala Devi had signaled, whereupon appellant no. 1 Raj Narayan Singh had gone to his room and brought a double barrel gun belonging to grand-father of PW-2 and had put the gun close to the neck of his father and fired resulting in father of PW-2 becoming injured and falling down as also he had got smeared with blood. PW-2 had then gone running down stairs



and called two persons upstairs and after lifting his father, he had taken him to Arrah Sadar Hospital for treatment on a rickshaw, however during the course of treatment he died.

21. PW-2 has further stated that apart from him, his mother and his grand-father as also appellant no. 2 have witnessed the said occurrence. On the next day the cremation of the dead body of his father was done and he had returned back to his house after cremation around 12:30-01:00 in the night. He has recognized the appellant no. 1 present in the dock and has stated that he can also recognize appellant no. 2 upon seeing her. In paragraph no. 8 of his cross-examination, PW-2 has stated that as soon as they had reached the house, after coming back from the Court, quarrel had started. The quarrel had continued for 4-5 minutes on the third floor of the house, whereafter firing had taken place and during the said 4-5 minutes no outsider had come there as also during the said period neither he nor his father had gone in the room. Grand-father had also not gone in the room of appellant no. 1. In paragraph no. 9 of his cross-examination, PW-2 has stated that his statement was recorded by the Officer-in-Charge after two days on 12.09.1993. In paragraph No. 11 of his cross-examination, PW-2 has stated that he does not remember as to whether blood stains were present



on the eastern and western walls, however lot of blood had fallen at the place where his father had fallen. He has next stated that after his father was hit by gun shots and had fallen down, he had gone downstairs and called two persons, whereafter he had taken his father to the hospital, however the said 2 persons were not known to him and till date he does not know either their name or address. In para no. 13 of his cross-examination, PW-2 has stated that prior to him giving statement before the Officer-in-Charge, he had not disclosed about the incident to anyone.

22. In paragraph no. 18 of his cross-examination, PW-2 has stated that after 1-1½ hours of him reaching the hospital, his grand-father had arrived there and at that time his father was conscious but was not speaking. PW-2 has stated that his grand-father did not tell him that his mother had filed a case. After PW-2 had taken his father to the hospital on the date of occurrence, he had returned back to his house on the next day with the dead body of his father at about 10:00-11:00 a.m. and his grand-father was alongwith him. The police had arrived at the hospital and during the period they had stayed at the hospital, many people had come there but he does not remember as to who all had come there because he was under grief. He has also stated that there is no witness to the fact that he was



alongwith his father. He has also stated that his signature is not present either on the inquest report or postmortem report or any document of the hospital, however he was with his father at the time the police had come to the hospital. He has also stated that he was not sent to the doctor to identify the dead body. In para no. 19 of his cross-examination, PW-2 has stated that he knows Harendra Singh and Akshay Kumar Singh since many days but he does not remember as to whether they had come to the hospital or not. In paragraph no. 22 of his cross-examination, attention of PW-2 has been drawn to the statement made by him before the Investigating Officer. In para no. 24 of his cross-examination, PW-2 has denied the suggestion that he had fired from the gun to kill appellant no. 1 but by mistake the same had hit his father. He has also denied the suggestion that on account of the said fact, he was absconding for two days and he had appeared before the police after her mother had filed the case.

23. PW-3 Dr. Sushil Kumar Rungta is the doctor who had conducted postmortem examination of the dead body of the deceased Ajab Singh on 10.09.1993 at 05:10 p.m. and his findings are as follows:-

“I. Fire arm lacerated wound 6½" x 2½" size bone deep on right side of lower part of face and on neck causing



laceration of major vessels, nerves, muscles and multiple fracture of mandible bone. Fresh blood clots were present on wound. Wound margin was inverted blackened and partially singed.

II. Abrasion 1/4" x 1/4" on outer aspect of right arm.

2. On dissection of injury no. 1 two plastic widgets and five pellets were found lodged in different areas of wound which were preserved, sealed and handed over to the Constable.

3. On further dissection and internal examination, all internal organs were pale, Heart-all chambers empty. Stomach contained about 200 grams of partially digested food particles. Bladder-empty. Skull-NAD. Meninges and brain-pale."

The cause of death according to PW-3 is shock and hemorrhage due to the aforesaid injuries on vital organs and major vessels of neck by fire arm weapon. The time elapsed since death up to conducting of the postmortem examination has been stated to be six hours. PW-3 has identified the postmortem examination report which is in his writing and bears his signature and the same has been marked as Exhibit-2. PW-3 has also stated that injury no. 1 is sufficient to cause death in ordinary course and injury no. 2 may have been caused by fall. In paragraph no. 6 of his cross-examination, PW-3 has stated that two plastic widgets and five pellets were found on different



areas of the said injuries. He has also stated that he has not mentioned the distance of one pellet from the other. He has also stated that pellet injury can be round in shape or oval in shape. No singeing or charring can be found if the pellet has been shot from a very distant place but exact opinion regarding distance can be given by a ballistic expert. He has also stated that Modi's Jurisprudence is an authority on this point. In paragraph no. 7 of his cross-examination, PW-3 has stated that usually when charring range ends, blackening range starts. In paragraph no. 9 of his cross-examination, PW-3 has stated that soon after death the eye lids loose tension and then rigor mortis starts appearing which generally starts after cooling of the body and the same starts firstly in the skeletal muscle i.e. voluntary muscle. He has also stated that he does remember as to whether rigor mortis begins firstly in voluntary muscles or in involuntary muscles, however rigor mortis starts from eye lids, then neck, then upper limbs including heart chambers and it takes about six hours to affect the eye lids.

24. PW-4 Shatrughan Sah is a Constable who is a formal witness and has brought the double barrel gun used in the killing of the deceased which has been marked as material Exhibit-1 and he has stated in his cross-examination that prior to bringing



the said gun to the Court he has not seen the same earlier.

25. PW-5 Shishir Kumar is Sergeant Major in Bihar Police and he has stated in his examination-in-chief that the Officer-in-Charge of Arrah Nawada Police Station, Shrikant Upadhyaya had sent a requisition on 24.09.1993 for examination of double barrel gun which he had received on 29.09.1993 and after examining the said gun he had returned back the same, finding the same to be in a working condition. He has further stated that the said gun which was in a working condition, had been fired from the right barrel since stains of gun powder was present in the right barrel which is a proof of the fact that firing was made from the right barrel. He has identified the requisition which is in the writing of Shrikant Upadhyaya and bears his signature and the same has been marked as Exhibit-3. PW-5 has identified the requisition sent by the Court to the Officer-in-charge, Arrah Nawada Police Station for producing the gun from the *Maalkhana* and the same has been marked as Exhibit-4. In paragraph no. 5 of his cross-examination, PW-5 has stated that he has obtained training of ballistic expert as also he has got a certificate which he can produce if called for.

26. PW-6 Shrikant Upadhyaya is the Investigating Officer of the present case, who has stated in his evidence that he was



posted as Officer-in-Charge at Arrah Nawada Police Station on 10.09.1993 and on that day he received a rumor information at about 02:20 p.m. that gunshot has been fired at Tribhuani Kothi, Station Road, Arrah, whereafter he had recorded the said information vide S.D. Entry No. 261 dated 10.09.1993 and had left for the place of occurrence and upon reaching the place of occurrence, he had met PW-1 Dharamsheela Devi (informant) and had recorded her statement. After writing fardbeyan of PW-1 he had read over the same to her, whereafter she had made her signature over the same, which he has identified. The fardbeyan has been identified by PW-6 and he has stated that the same is in his writing and bears his signature as also the signature of PW-1, which has been marked as Exhibit-5. PW-6 has also stated that he had recorded the re-statement of the informant and at the place of occurrence he had not found the injured, however he came to know that he had been taken to Sadar Hospital. On the basis of the aforesaid fardbeyan, PW-6 had registered a formal FIR in his writing and had also signed the same which he has identified and the same has been marked as Exhibit-6. He has also submitted that the place of occurrence is the joint three storied house of the informant and the accused.

27. PW-6 has also stated that he had recovered a double



barrel gun from the bed situated in the room of the accused. Outside the room in the veranda, blood had been freshly washed by water. He had seized the gun as also the water mixed with blood and the soil smeared with blood and prepared the seizure list in presence of the witnesses. He has also stated that he had seen the wife of the accused washing the blood, whose name is Shakuntala Devi. He had also recorded the statement of the father of the deceased, namely Ram Sewak Singh and his son Sanjay Kumar Singh @ Munna Singh. PW-6 had also prepared the inquest report at the hospital in presence of Harendra Singh and Akshay Singh. PW-6 has identified the inquest report which is in his writing and bears his signature and the same has been marked as Exhibit-7, however he has added that the aforesaid two seizure list are not present in the case diary. PW-6 had prepared the requisition for sending the dead body for postmortem examination, which he has identified and bears his signature and the same has been marked as Exhibit-8. PW-6 had also sent the seized gun to the Sergeant Major for examination and for the said purpose he had prepared the requisition which is in his writing and bears his signature and the same has been marked as Exhibit-3. PW-6 had, after completion of the investigation, filed a charge sheet. In paragraph no. 13, PW-6



has stated that firstly he had recorded the fardbeyan at the place of occurrence at about 03:00 p.m. in the day time, however he had not mentioned the time of recording of the re-statement of the informant and examination of the place of occurrence in his case diary, however the time of preparation of inquest report has been mentioned in the inquest report to be 16:45 hours.

28. In paragraph no. 14 of his cross-examination, PW-6 has described the place of occurrence and has further stated that at the place of occurrence he was present from 15:00-16:45 hours. In paragraph no. 15 of his cross-examination, PW-6 has stated that he had not found any blood on the staircase and the *Galiyara* (veranda) situated on the third floor of the house in question. He had neither recorded as to the area from where the blood had been washed nor he had seized the articles like bucket, broom etc., which were used for washing the blood. He has also stated that the factum of seizure list is not mentioned in the diary nor anything is mentioned in the diary either about seizure of gun or about the name of the witness to the said seizure list. In paragraph no. 16, PW-6 has stated that he did not enquire as to whom the seized gun belongs to. In paragraph no. 17, PW-6 has stated that he had not sent the water mixed with blood and the blood-soaked mud for forensic examination and



the same was kept at the Police Station. He had also not sent the finger print present on the gun for examination, however he had sent the gun to the Sergeant Major on 24.09.1993 for examination, i.e. after 14 days since he was busy in other work. In paragraph no. 18 of his cross-examination, PW-6 has stated that he had neither recorded the statement of appellant no. 1 nor that of appellant no. 2 and had also not made any attempt to record the statement of the tenant or the people present nearby the house in question. In para no. 23 of his cross-examination, PW-6 has stated that the informant Dharamsheela Devi had not stated in her re-statement that Sanjay Kumar Singh @ Munna Singh is also an eyewitness. PW-6 has further stated that Dharamsheela Devi has not stated in her statement that Shakuntala Devi had made a signal. In paragraph no. 24 of his cross-examination, PW-6 has stated that Sanjay Kumar Singh had said in his statement that his grand-father had gone in the room of Raj Narayan Singh (appellant no.1). In para no. 25 of his cross-examination, PW-6 has stated that it is not a fact that in connivance with the informant, he has registered a wrong case as also it is not a fact that Sanjay Kumar had fired from the gun, hence he had not sent the finger print present on the said gun for examination. PW-6 has also denied the suggestion that



the gun was not recovered from the room of appellant no. 1 but from the room of Sanjay Kumar Singh, hence he had not prepared any seizure list deliberately.

29. After closing the prosecution evidence, the learned Trial Court recorded the statement of the aforesaid appellants on 19.04.1995 under Section 313 of the Cr.P.C. for enabling them to personally explain the circumstances appearing in the evidence against them, however they claimed to be innocent.

30. The learned Trial Court, upon appreciation, analyzing and scrutiny of the evidence adduced at the trial has found the aforesaid appellants guilty of the offence and has sentenced them to imprisonment and fine, as stated above, by the impugned judgment and order.

31. We have perused the impugned judgment of the Ld. Trial Court, the entire materials on record as also the evidence on record and have given thoughtful consideration to the rival submissions made by the Ld. Senior Counsel for the appellants, the Ld. APP for the State and the Ld. Counsel for the informant. The foremost thing which has to be adjudged is as to whether there is sufficient ocular evidence to connect the appellants with the crime which has taken place and as to whether the same goes to prove their guilt beyond all reasonable doubt. We find



from the evidence on record that PW-1 and PW-2 are the eye-witnesses to the occurrence in question and they have consistently stated in their evidence that after the father-in-law of the informant alongwith the son and husband of the informant had come back from the Court and reached the veranda of the third floor of the house in question, quarrel had taken place in between the appellant no. 1 and the deceased husband of the informant with regard to partition of the shops situated on the southern side of the ground floor of the house in question and then in a fit of rage, the appellant no. 1 had gone to his room and brought the licensed gun of his father and after putting the same near the neck of the deceased husband of the informant, he had fired gunshots leading to the deceased being injured and falling down on the ground, whereafter blood had started oozing out and then the son of the deceased alongwith two unknown persons had lifted the deceased and taken him to the hospital on a rickshaw where he died during the course of treatment. We further find that the ocular evidence of PW-1 and PW-2 has not been impeached during the course of cross-examination inasmuch as no contradiction has been elicited. We also find that as far as the Investigating Officer i.e. PW-6 is concerned, he had found proof of the deceased having been shot in the veranda



of the third floor of the house in question and had also found the appellant no. 2 washing the blood which had fallen on the veranda, apart from having seized the gun from the room of the appellant no. 1 which has also been examined by the Sergeant Major i.e. PW-5, who had substantiated the factum of gunshot having been fired from the right barrel of the said gun. We also find from the evidence of the doctor i.e. PW-3, who had conducted the postmortem examination of the dead body of the deceased that the deceased has died on account of fire arm injury on vital organs and major vessels of neck due to shock and hemorrhage and the fire arm lacerated wound is quite big i.e. 6½” x 2½” as also the wound margin has been found to be blacken and partially singed which also goes to prove that the gun shot was fired from a close range. Thus, we find that the aforesaid witnesses produced by the prosecution have not only proved the mode and manner of occurrence but also the date, time and place of occurrence, as has been narrated by the informant in her fardbeyan.

32. Thus, taking into account an overall perspective of the entire case, emerging out of the totality of the facts and circumstances, as indicated hereinabove and considering the evidence, which has been brought on record to prove the



allegations levelled against the appellants, which has not been discredited during the course of cross-examination, we can safely conclude that the evidence led by the prosecution is cogent, convincing, creditworthy and reliable. Therefore, considering the credibility and trustworthiness of the evidence of the prosecution, coupled with the postmortem report, we find that there is no reason to create any doubt in our minds about the guilt of the appellants in the alleged occurrence which stands proved beyond all reasonable doubts.

33. At this juncture, we would take up the submissions made by the learned senior counsel for the appellants, firstly to the effect that the defence had made a suggestion to PW-1 and PW-2, though denied that actually PW-2, in a fit of rage fired gunshot on the appellant no. 1, however the same had missed him and had instead hit the deceased leading to his death. In this regard, we may first state that the medical evidence shows that the firing has been made from a very close range, however in case the factum of PW-2 having fired on the appellant no. 1 and the same having missed him and instead hit the deceased is taken into account then the medical evidence does not corroborate the same since the said gunshot obviously would have been fired from at least some distance. We may also point



out that a bare perusal of the suggestion made by the defence to the aforesaid witnesses i.e. PW-1 and PW-2, though denied by them in paragraph nos. 27 and 24 of their evidence respectively, leads to admission of the factum of the date, time, place, mode and manner of occurrence. We may also refer to the well settled law as propounded by the Hon'ble Apex Court in the case of ***Balu Sudam Khalde*** (supra) to the effect that any suggestion made by the defence counsel to a witness in his cross-examination has got no evidentiary value apart from the fact that no evidence has been produced by the defence to substantiate the factum of PW-2 having fired on the appellant no. 1 and the same having missed him and instead hit the deceased leading to his death. As far as the factum of PW-2 being missing for two days is concerned, we do not find any force in the said argument in view of the fact that there is ample evidence on record to suggest that he was engaged in looking after his father in the hospital, whereafter he was occupied in cremating the dead body of his father and after he became free, his evidence was recorded by the Investigating Officer after two days, which in any view of the matter is not at all abnormal and does not suggest anything untoward. As regards seizure list of the gun being not exhibited, resulting in the weapon used in killing of



the deceased having not stood proved, we find that the law with regard to the said issue has already been discussed herein above in the preceding paragraph to the extent that for convicting an accused recovery of weapon used in commission of an offence is not necessary in case there is sufficient ocular evidence to connect the accused with the crime. It is equally a well settled law, as already discussed herein above that non-recovery of weapon does not materially affect the case of the prosecution in case unimpeachable oral evidence is available which also stands corroborated by medical evidence and any omission on the part of the Investigating Officer or conduct of defective investigation by him cannot go against the prosecution. One more circumstance which would be important is that neither of the appellants had taken any steps to inform the police in case they were sanguine that PW-2 had fired on the appellant no. 1, which had missed him and had instead hit the deceased but on the contrary, the appellant no. 1 had instead fled away which also makes such defence of the appellants implausible.

34. Thus, upon analyzing the entire evidence on record, taking into account the facts and circumstances, as indicated hereinabove and for the reasons mentioned hereinabove, we find that the evidence led by the prosecution is cogent, convincing,



creditworthy and reliable, hence there is nothing to doubt their testimony, on the basis of which the Ld. Trial Court has convicted the appellants. Therefore, there is no reason to create any doubt about the guilt of the appellants in the alleged occurrence which stands proved beyond all reasonable doubts. Hence, having examined the materials available on record, we do not find any apparent error in the impugned judgment of conviction.

35. We would now take up for consideration the alternative argument advanced by the Ld. Senior counsel for the appellants to the effect that the appellant no. 1 had no intention to cause death inasmuch as the incident had taken place on the spur of the moment in the heat of passion, hence the present case would not fall within the purview of Section 302 of the Indian Penal Code, rather it would at best attract the provision of Section 304 Part-II of the Indian Penal Code, in absence of any intention on the part of the appellant no. 1 to cause the death of the deceased. We have given a careful consideration to the argument raised by the learned senior counsel for the appellants. So far as the facts of the present case are concerned, it is apparent not only from the evidence adduced by the prosecution especially that of PW-1 and PW-2 but also from the FIR that the appellant no. 1 had a



quarrel with the deceased with regard to partition of the shops situated on the ground floor towards the southern side and in a fit of rage, as substantiated by the prosecution witnesses especially PW-1 and PW-2 who are the eye-witnesses, the appellant no. 1 had gone to his room and brought the licensed gun of his father, whereafter he had kept the same near the neck of the deceased and fired gun shots. We also find from the evidence of PW-1 and PW-2 that the entire incident had taken place within a span of 2-4 minutes which also goes to show that the incident had taken place at the spur of the moment in a heat of passion without any pre-meditated mind.

36. At this juncture, we would refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Parkash Chand vs. The State of H.P.***, reported in ***(2004) 11 SCC 381***, paragraphs no. 7 and 8 whereof are reproduced herein below:-

“7. The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of provocation not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that



provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A “sudden fight” implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused : (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4, all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must



further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression “undue advantage” as used in the provision means “unfair advantage”. These aspects have been highlighted in Dhirajbhai Gorakhbhai Nayak v. State of Gujarat [(2003) 9 SCC 322]. When the factual scenario is considered in the light of legal principles indicated above, the inevitable conclusion is that Exception 4 to Section 300 IPC is clearly applicable.

8. Additionally, the shot was fired from a distance of 35 feet. Though the distance is always not determinative about the intention or knowledge of the accused, the factual background has to be considered taking into account the nature of injuries sustained, the weapon used and such other relevant factors. As illuminatingly highlighted in Virsa Singh v. State of Punjab [AIR 1958 SC 465] under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. : (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which in the ordinary course of nature, was sufficient to cause death viz. that the injury found to be present was the injury that was intended to be inflicted. For cases to fall within clause thirdly, it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. According to the rule laid down in Virsa Singh case [AIR 1958 SC 465] even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out the point. The above



aspects were highlighted in Abdul Waheed Khan v. State of A.P. [(2002) 7 SCC 175] and Ruli Ram v. State of Haryana [(2002) 7 SCC 691]. On that score also the proper conviction will be under Section 304 Part I IPC and not Section 302 IPC as done by the trial court and upheld by the High Court. The conviction is accordingly altered. Custodial sentence of ten years would meet the ends of justice.”

In the aforesaid case of **Parkash Chand (supra)**, a quarrel had taken place in between the deceased and the accused who were real brothers, on account of dogs of the accused having entered the kitchen room of the deceased and when the deceased had asked the accused to keep his dogs tied in chains, verbal altercation had taken place, tempers flew and then the accused went to his room, took out his gun and fired a gunshot at the deceased resulting in his subsequent death on account of the said gunshot firing. The Hon'ble Apex Court in the said case while relying on Exception-4 to Section 300 of the Indian Penal Code has held that on account of the reasons mentioned in the said judgment, it would be proper that the conviction should be converted under Section 304 Part-I of the Indian Penal Code and not Section 302 of the Indian Penal Code as done by the Trial Court and upheld by the High Court, hence accordingly the conviction had been altered and it was held that custodial sentence of 10 years would meet the ends of justice.



37. Now, coming back to the present case and considering its factual matrix, it can be gathered that the act done by the appellant no. 1, who had caused the death of the deceased, took place at the spur of the moment in a heat of passion without any pre-meditated mind, however with a knowledge that such act is likely to cause death and in fact we find from the material on record that the appellant no. 1 also had intention to cause death inasmuch as he had fired from a close range on the neck of the deceased leading to him having suffered gunshot injury and ultimately he had succumbed to his injuries in the hospital. Thus, we find that the present case would fall under Exception-4 to Section 300 of the Indian Penal Code which is reproduced herein below:-

“Exception 4 to Section 300.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

38. Having considered the facts and circumstances of the present case as also taking into account the law laid down by the Hon’ble Apex Court in the case of **Parkash Chand** (supra), we safely conclude that the present case cannot be described as a murder but it would be culpable homicide not amounting to



murder, since it is evident from the evidence led in the present case that the overt act engaged in by the appellant no. 1, resulting in death of the deceased took place at the spur of the moment in a heat of passion on account of heated verbal spat without any pre-meditated mind. Thus, the clear intent needed to prove culpable homicide amounting to murder has not been established by the prosecution beyond all reasonable doubt. Therefore, the present case, as far as killing of the deceased by the appellant no. 1 is concerned, would fall under Exception-4 to Section 300 of the Indian Penal Code, thus the same would not fall under Section 302 of the Indian Penal Code but would come under the purview of Part-I of Section 304 of the Indian Penal Code. As such the conviction of the appellant no. 1 under Section 302 of the IPC and the sentence of rigorous imprisonment for life awarded thereunder along with fine of Rs.1,000/- are set aside and instead the appellant no. 1 is convicted under Part-I of Section 304 of the Indian Penal Code. As far as the sentence is concerned, we find that it would be just and equitable to award custodial sentence of 10 years to the appellant no. 1, as a result of the altered conviction. However, conviction under Section 27 of the Arms Act would stand against the appellant No.1 but with no separate sentence being



awarded thereunder.

39. Now coming to appellant no. 2, we find from the evidence on record that neither it has been alleged nor there is any material on record to suggest her complicity in the alleged killing of the deceased by the appellant no. 1 and the only allegation which has been levelled is regarding her having washed the blood which had fallen on the veranda with an intention to erase the evidence. We find that though it has been stated by the prosecution witnesses that the appellant no. 2 had brought water in a bucket and was cleaning the veranda, however evidence of PW-6 (Investigating Officer) would show that neither the blood nor the bucket, much less the broom used to wash the blood were seized and moreover, it is intriguing as to when the Investigating Officer had seized the blood mixed with water and kept it in the Police Station, inasmuch as neither there is any mention about the same in the case diary nor the seizure list, if any prepared by the Investigating Officer has been exhibited during the course of the trial much less the seizure witnesses having been produced before the learned Trial Court, hence it appears that the prosecution has tried to improve upon the actual version with the intention of implicating the appellant no. 2 as well with oblique motives. Nonetheless, the fact



remains that there is no documentary evidence much less any material exhibit on record to suggest that the appellant no. 2 was trying to erase the evidence by cleaning the blood on the veranda. One more circumstance, which we may discuss at this juncture, is that in case the appellant no. 2 was so cognizant about erasing evidence, she could have first of all removed the gun kept in the room of the appellant no. 1 but instead she is alleged to have washed the blood present in the veranda, which also creates a doubt about the allegation levelled against the appellant no. 2. Thus, we find that the allegation levelled against the appellant no. 2 of making an attempt to erase the evidence has not stood proved beyond all reasonable doubt. Therefore, we deem it just and equitable to acquit the appellant no. 2 of the charges levelled against her under Section 201 of the Indian Penal Code, giving her the benefit of doubt. Accordingly, the conviction of the appellant no. 2 under Section 201 of the IPC and the sentence of rigorous imprisonment for 3 years with fine of Rs. 100/- are set aside.

40. As far as the appellant no. 1, namely Raj Narayan Singh is concerned, since he is on bail, his bail bonds are cancelled and he is directed to surrender before the learned Trial Court within a period of four weeks from today so that he can be sent



to jail for serving the remainder part of the sentence, as aforesaid.

41. The appellant no. 2, namely Shakuntala Devi has now stood acquitted of the charges levelled against her under Section 201 of the Indian Penal Code and since she is on bail, she is discharged from the liabilities of her bail bonds.

42. The aforesaid Criminal Appeal (DB) No. 334 of 1995 stands partly allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

S.Sb/-

(Soni Shrivastava, J)

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