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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 14th February, 2025***+ **CRL.A. 276/2002****MANGA RAM****.....Appellant**

Through: Mr. Ramneek Mishra, Mr. Rupinder Pal Singh, Mr. Abhinav Singh, Mr. Vikas Chaudhary, Mr. Tejendra Rajawat, Mr. Anugrah Singh, Ms. Shreya Chopra & Mr. Praveen Kaushik, Advocates

versus

STATE**.....Respondent**

Through: Mr. Ritesh Kumar Bahri, APP with Mr. Lalit Luthra & Ms. Divya Yadav, Advs. with Insp. Nitin Pal Singh, PS Tuglaq Road.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE DHARMESH SHARMA****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the Appellant – Manga Ram under Section 374 of Cr.P.C challenging the impugned judgment and order on sentence dated 6th February, 2006 passed by the Id. ASJ, Patiala House, New Delhi in FIR No 263/1997 filed by PS Tuglaq Road under Section 302 IPC. The Appellant *vide* the impugned judgment and order on sentence has been convicted under Section 302 and sentenced for life imprisonment. The relevant paragraphs of the order on sentence reads as under:

“Vide separate order I have convicted Manga Ram u/s 302 IPC. I have heard Id. APP and Id. Defence Counsel on the point of sentence. It has been submitted by Id. Counsel for the accused that he is not a previous



convict, he has a big family to support, therefore, a lenient view be taken. It is also argued that the incident has taken place on the spur of the moment which requires that accused should be treated with leniency.

*2. Two sentences have been prescribed u/s 302 IPC i.e. the capital sentence and sentence of imprisonment for life. No third alternative has been provided. The capital sentence can only be passed in those cases where the case, according to its own circumstances, acquires the notoriety of being the rarest of rarest case. The accused was on duty when he fired on the deceased while he was sleeping. Nothing has come on record as to under what circumstances such an untoward incident took place yet it is not a case which requires award of extreme penalty. The second alternative is only the award of imprisonment for life to the convict. **Accordingly, I sentence the convict to undergo imprisonment for life and impose a fine of Rs.500/- upon him, default of payment of fine he shall further undergo SI for 1 month.** A copy of this order be given to the convict free of cost in order to enable him to file an appeal against the judgment and jail warrant be prepared and be sent to the Supdt. Jail in the name of the accused to serve the sentence.”*

3. The case reveals an unfortunate incident which occurred on 19th September, 1997. The Appellant was a member of the Rajasthan Armed Constabulary (hereinafter ‘RAC’) and was stationed at Gazipur. From time to time, he was being posted at various government institutions, bungalows and installations for providing security services. On the date when the unfortunate incident took place, the Appellant along with certain other members of the same constabulary was posted behind Vigyan Bhawan on Maulana Azad Marg, New Delhi for giving guard duty. The Appellant was deployed between 9:00 pm and 12:00 pm near tents installed for the guards’ personnel. At that



time, an incident took place wherein the Appellant had shot at one Mr. Surender Pal (hereinafter '*deceased*' or '*victim*') with 2 to 3 gun shots thereby resulting in the death of the latter.

4. The FIR was then registered under Section 302, IPC. The Prosecution examined 24 witnesses including certain other constables who were posted on duty along with the Appellant on the day of the incident. The Appellant did not lead any evidence in defence. However, his statement under Section 313 of Cr.P.C was recorded. The Trial Court, however, convicted him under Section 302 and sentenced him as captured above.

5. Ld. Counsel for the Appellant has submitted vehemently that the Appellant himself being a security guard, had no prior acquaintance or familiarity with the deceased. There are no witnesses who saw the occurrence of the shooting. The explanation provided by the Appellant in his statement under Section 313 Cr.P.C. clearly indicates that his actions were a result of sudden provocation by the deceased. As per his statement, the deceased made certain remarks concerning the Appellant's biological inability to have a male child in the family and in a depraved manner asked the Appellant to send his wife to him, which allegedly had caused him to lose self-control, which resulted in exchange of words and scuffle ultimately leading to the act of firing at the deceased.

6. It is submitted that the Appellant has already undergone more than nine years with the period of remission being counted. It is further submitted that since there was no motive to kill and it was not a pre-meditated act, the life imprisonment of the Appellant deserves to be reduced and the Appellant's conviction ought to be not under Section 302 IPC but only under Section 304 IPC, if any.



7. Reliance is also placed upon *post-mortem* report PW-12/A and 12/B to argue that the nature of the injury caused would show that there was no intention to cause death to the deceased. It is also submitted that in fact a verbal scuffle appears to have taken place between the Appellant and the deceased which led to the occurrence of the incident.

8. On the other hand, Mr. Bahri, Id. APP for the State submits that all the prosecution witnesses who were present at the spot around the time of the incident have categorically supported the case of the prosecution. Specifically, PW-1 Ct. Bhagwan Sahi and PW-24 HC Sahi Ram have deposed that they were sleeping on their respective cots next to the deceased and had woken up upon hearing the shots being fired. Similarly, PW-2 Daya Chand and PW-4 Ct. Ramesh Chand had deposed that they were at a certain distance when they heard the gun shots being fired. PW-1, PW-3 and PW-24 have categorically deposed that they saw the Appellant with his Self-Loading Rifle (hereinafter '*SLR*') standing next to the deceased at the time of the incident. The SLR had live cartridges and two fired bullets were also recovered from the spot. The *post-mortem* also shows that the injuries were of such a nature sufficient to cause immediate death in the ordinary course of nature. The Appellant, being a security guard, was fully aware of the consequences of his actions.

9. Reliance is placed upon the decision in *Virsa Singh v. State of Punjab; AIR 1958 SC 465* to argue that once the three elements under Section 300 are established, the Court has to proceed under the presumption that the injuries caused were sufficient to cause death. The intention would not then matter. The relevant paragraphs of the judgment relied on read as under:

"14. To put it shortly, the prosecution must prove the following



facts before it can bring a case under Section 300 "thirdly".

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

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

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

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

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

20. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional."

10. Insofar as the Appellant's statement under Section 313 Cr.P.C. is concerned, the learned APP submits that following the verbal altercation, the



Appellant had a cooling-off period before firing at the deceased. This, according to the Id. APP, shows that the act was not a repercussion of sudden provocation but rather a premeditated one.

11. The Id. APP in conclusion submits that this was not a case where any benefit can be granted to the Appellant even if the Appellant's statement under Section 313 Cr.P.C is taken into account.

12. The Court has considered the matter. In light of the submissions advanced by the parties, the primary issue in this appeal is not whether the Appellant committed the acts that led to the deceased's demise. Rather, the issue is whether these acts, which are not disputed, constitute an offense punishable under Section 300 thirdly of the IPC or fall within the scope of Section 304 Part II.

13. Before analysing the factual matrix, it is important to set out the settled legal position in the above regard. The factor that differentiates an offense punishable under Section 300 thirdly, 304 part II of IPC is the '*intention*' with which the accused executed the alleged offence.

14. For the ease of reference, Section 300, thirdly of the IPC reads as under:

"300. 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—

3rdly.—if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death,"

Section 304 Part II of IPC reads as under

"304. Punishment for culpable homicide not amounting to murder. —Whoever commits culpable homicide not amounting to murder shall be punished



with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death”

15. A perusal of the provisions would show that a person is said to have committed an offense under Section 300, IPC if he had acted with the intention of causing a bodily injury that in ordinary course of nature is sufficient to cause death. However, a person is said to have committed an offense under Section 304 Part II, IPC if he had done an act without the intention but rather with the mere knowledge of the fact that such act is likely to cause the death.

16. Therefore, ‘intention’ is the primary factor that determines whether an offense falls under Sections 302 or 304 Part II of IPC. However, ‘intention’ is an abstract and often an elusive concept that may not always be apparent. Recognizing this, Courts have, in several judgments, outlined various circumstances through which ‘intention’ can be objectively inferred. The Supreme Court in the case of *Pulicherla Nagaraju v. State of A.P. (2006) 11 SCC 444*, observes as under:

“29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the



spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.

17. The Court shall now proceed to examine the aforementioned circumstances to ascertain whether the element of intention is present or absent in the facts of the present case.

18. The nature of the weapon used is not disputed and admittedly is an SLR. The Appellant's possession of the weapon/rifle was explained by PW-3 ASI Suresh Chand, who was the Platoon Commander of the Appellant's regiment (RAC). He had deposed that every individual, upon being posted to



a place, is permanently issued a weapon till the end of his posting at that particular place. Therefore, the admitted position is that the Appellant's possession of an SLR was not incidental but a standard requirement of his official duties.

19. It is not disputed that the bullet injuries were inflicted on a vital part of the body, namely the abdomen. As per the *post-mortem* report and the seizure memos of the rifle and cartridge, exhibited as PW-12/A, PW-15/D and PW-15/C, respectively, the Appellant discharged two gunshots. Given that the injuries resulted from firearm use, the amount of force employed is not a determinative factor in this case.

20. One of the relevant and important circumstances to be considered for inferring the presence/absence of 'intention' is whether the acts of the Appellant were pre-mediated. In *Jhaptu Ram v. State of H.P., (2014) 12 SCC 410*, the Supreme Court, while addressing a similar case, modified the conviction from **Section 302 IPC** to **Section 304 Part II IPC**. The core facts of that case were that the Appellant had fired at the deceased during an altercation using his licensed firearm. However, the prosecution failed to establish any direct evidence of premeditation, as there were no eyewitnesses to substantiate an overt act demonstrating prior intent. The Court's reasoning was based on the absence of proof that the Appellant had brought the firearm to the victim's house with a premeditated intent to kill. The relevant observations of the Court are as follows:

“5. Shri T.V.S. Raghavendra Sreyas, learned counsel appearing on behalf of Ms Urmila Sirur, learned amicus curiae, has submitted that the prosecution has not led any evidence to show that the offence committed by the appellant was premeditated. Nor has it been established by leading an evidence that after



picking an altercation with the deceased, the appellant had gone into the house and brought a gun. In this respect, there is no evidence on record and it is a case wherein the appellant could be convicted under Section 304 Part I IPC.

7. We have considered the matter, undoubtedly, it was a case wherein the deceased and his mother Bhagti Devi (PW 1) had been called to intervene and pacify the matter. It is also clear from the evidence on record that an altercation took place between the appellant and the deceased. There is no iota of evidence to show that there was any prior intention of the appellant to kill the deceased. As per the medical and ocular evidence, there was only gunshot fired by the appellant which proved to be fatal for the deceased. More so, the prosecution failed to marshal any evidence to show that the gun was in his hand when the deceased entered his house. In such peculiar facts and circumstances of the case, we agree with the submissions advanced by Shri Sreyas, learned counsel for the appellant.

21. The Court's reasoning underscores that, in cases where a firearm is readily available, establishing premeditation requires proof of active steps taken by the accused to plan the offense. In the present case, as noted earlier, the presence of the firearm was explained by **PW-3 ASI Suresh Chand**, who stated that the weapon was issued to the Appellant as a standard requirement of his official duties. Beyond this, the prosecution has failed to present any eyewitness testimony indicating that the Appellant engaged in overt premeditative acts prior to the firing. In the absence of direct witnesses, the only available material to assess the presence or absence of premeditation is the Appellant's statement under **Section 313 Cr.P.C.**, which provides insight into the sequence of events leading up to the incident. The relevant portion of the statement reads as under:



“Q.22 Do you want to say anything more?

Ans. I say that on the day of incident I was performing my duties as a Santary. Surrinder Pal deceased was reading a novel ‘Chay Sir Wala Rawan’. He enquired from me as to the time when I was married. I told him that I was married Jan.1993. and I had one daughter. At this deceased HC Surrinder Pal enquired from me why there is no son out of your marriage with your wife. I informed him that it depends upon the nature whether a girl is borned or boy is borned. At this deceased Surrinder Pal told me that it is not the law of nature but is a serious defect in you. You seems to be a deficient and therefore you cannot produced a son and you bring your wife to me and you see the result that the son will be born. At this Surrinder Pal and myself scuffled and in the process the SLR went of and later on. I came to know that it had hit Surrinder Pal. Due to which he scummed to an injury. I further submit that I am from a very poor strater of society. We people keep goats and sheeps and we make our livelihood by those animals. In our caste we people attached great important to the respect of the women. Our female partners covered their faces with the help of veil and rarely go outside the house. They stay in the house, attending the household chores. I have stayed in a village along with my parents. While completing my school qualification, my parents are back ward and uneducated. I have also been learning a hand in maintaining the animals like goats and sheeps.”

22. A careful reading of the statement indicates that the altercation arose spontaneously, without any prior intent to cause fatal harm. The Appellant did not know the deceased. It is in the evidence that the deceased was having alcohol at the time of the incident. It is highly probable that some unsavoury



words were uttered by him on being asked by the Appellant to behave properly. The sequence of events narrated by the Appellant suggests that the firearm was discharged in the heat of the moment after a verbal scuffle, rather than as a result of any deliberate plan to kill the deceased. Therefore, the State has failed to present any concrete evidence suggesting prior intent or preparation, and thus the element of premeditation remains unsubstantiated.

23. The next circumstance that is relevant in this case is the presence or absence of familiarity between the Appellant and the deceased. Again, the Prosecution has failed to establish any prior acquaintance, hostility, or pre-existing animosity between the parties that could substantiate the claim of intention.

24. Among these circumstances, the primary argument/defence advanced by the Appellant, to disprove 'intention', is that of sudden provocation which according to the Appellant had ensued a verbal scuffle wherein the deceased had made comments in bad taste about the Appellant and his wife.

25. On the concept of sudden provocation the Supreme Court in *Dauvaram Nirmalkar v. State of Chattisgarh, 2022 SCC OnLine SC 955* has observed that loss of self-control by sudden provocation is a question of fact that is

(1) to be counter-balanced against mitigating factors such as cooling off period and proportionality; and

(2) to be read from the lens of a reasonable person belonging to the same class of society as the accused.

The relevant paragraph in the said judgment reads as under:

“12. The question of loss of self-control by grave and sudden provocation is a question of fact. Act of provocation and loss of



self-control, must be actual and reasonable. The law attaches great importance to two things when defence of provocation is taken under Exception 1 to Section 300 of the IPC. First, whether there was an intervening period for the passion to cool and for the accused to regain dominance and control over his mind. Secondly, the mode of resentment should bear some relationship to the sort of provocation that has been given. The retaliation should be proportionate to the provocation. The first part lays emphasis on whether the accused acting as a reasonable man had time to reflect and cool down. The offender is presumed to possess the general power of self-control of an ordinary or reasonable man, belonging to the same class of society as the accused, placed in the same situation in which the accused is placed, to temporarily lose the power of self-control. The second part emphasises that the offender's reaction to the provocation is to be judged on the basis of whether the provocation was sufficient to bring about a loss of self-control in the fact situation. Here again, the court would have to apply the test of a reasonable person in the circumstances.

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26. An important yet inhibiting feature in this case is that none of the witnesses had any knowledge of (1) the alleged verbal exchange and scuffle that took place (2) the actual act of firing, as there are no eye witnesses. All of them have only deposed to have heard the gun shots and to have seen the Appellant with the SLR at the place of the incident. Therefore, the Prosecution case, by being silent as to the periodical proximity/time gap between the verbal scuffle and the gun shots, has failed to prove the existence of any cooling off period.

27. Insofar as the proportionality and reasonable person standards are concerned, a careful examination of the Appellant's statement under Section 313 Cr.P.C. provides insight into his socio-cultural background and state of



mind at the time of the incident. The Appellant, hailing from an economically disadvantaged and traditionally conservative community, has emphasized the significance attached to familial honor and the respect accorded to women within his social strata. Given these circumstances, it is reasonable to infer that a person similarly situated would have experienced intense emotional distress and provocation. Therefore, in the Court's view, the circumstances of the case meet the threshold for grave and sudden provocation, as a person placed in a similar situation, considering the Appellant's socio-cultural background, would likely have experienced extreme emotional turmoil, leading to an impulsive reaction. The statement under Section 313 extracted above shows that in the verbal altercation the deceased alleged that the Appellant was 'deficient' and that his wife may be brought to the deceased, for producing a son. Such a statement, would constitute a sudden provocation considering the background of the Appellant.

28. In the absence of any premeditation and given the likelihood that the incident occurred due to grave and sudden provocation, this Court finds no conclusive evidence of the Appellant's intention to cause death. Accordingly, the Appellant's conviction warrants modification to an offense under Section 304 Part II of the IPC.

29. The Nominal roll would show that the Appellant has already undergone incarceration for a period of 9 years, 1 month and 11 days as of 3rd February 2025 including the period of remission earned.

30. In view of the above, the impugned order on sentence is modified to the period already undergone.

31. The appeal is accordingly partly allowed and disposed of in these terms. All pending applications are also disposed of.



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32. A copy of this order be communicated to the concerned Jail Superintendent.

PRATHIBA M. SINGH
JUDGE

DHARMESH SHARMA,
JUDGE

FEBRUARY 14, 2025
Rahul/am