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**In The High Court for the States of Punjab and Haryana
At Chandigarh**

1. CRA-D-85-DB-2005 (O&M)

Baljit Singh ... Appellant
Versus
State of Punjab ... Respondent

2. CRA-D-337-DB-2005 (O&M)

Dinesh Chaturvedi ... Appellant
Versus
State of Punjab ... Respondent

Date of Decision:- 13.02.2025

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. R.S.Cheema, Senior Advocate, with
Ms. Sumanjit Kaur, Advocate,
for the appellant in CRA-D-85-DB-2005.

Mr. Abhimanyu Kalsy, Advocate,
for the appellant in CRA-D-337-2005.

Mr. Harkanwar Jeet Singh, AAG, Punjab.

GURVINDER SINGH GILL, J.

1. This judgment shall dispose of above-mentioned two appeals, wherein judgment dated 14.01.2005 passed by learned Additional Sessions Judge, Ludhiana, is being assailed. Vide impugned judgment, both the



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appellants namely Baljit Singh and Dinesh Chaturvedi have been held guilty and sentenced as under:

Accused/Appellant Dinesh Chaturvedi

Under Section - To undergo imprisonment for life and to pay a fine of 302 IPC Rs.10,000/- and in default of payment of fine to undergo further RI for six months

Under Section - To undergo rigorous imprisonment for five years and to pay a fine of Rs.5000/- and in default of payment of fine to undergo 27(i) of the Arms Act further RI for three months

Accused/Appellant Baljit Singh

Under Section - To undergo imprisonment for life and to pay a fine of 302/34 IPC Rs.10,000/- and in default of payment of fine to undergo further RI for six months

2. The matter arises out of FIR No.140 dated 30.03.1999 registered at Police Station Sadar Ludhiana, under Sections 302/34 IPC (Ex.PA/1) on the basis of statement (Ex.PA) of Vinod Kumar, wherein he stated that on 30.03.1999, he alongwith his wife Shaveta, daughter Tanya and niece Alisha had gone to Ludhiana in connection domestic work in their Tata Sumo bearing registration No.HR-01F-5676. While on their way-back from Ludhiana to Jalandhar, at about 5.00 PM when they were near Sutlej Bridge, a police official signaled them to stop the vehicle and he accordingly stopped the same. The police official namely PHG Dinesh Chaturvedi asked him to come out of the vehicle and while he was alighting from the same, another police official namely C-1 Baljit Singh, who was standing nearby, shouted loudly telling him to come out failing which they will shoot. While he was coming out of the vehicle, both the said police officials shot at his Tata Sumo and one of the shots hit his wife



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Shaveta on the right side of her chest. On account of their hue & cry, several persons were attracted to the spot, who suggested the complainant to rush his wife to hospital. Although the complainant's wife Shaveta was taken to hospital, but she succumbed to the injuries upon reaching the hospital. The complainant alleged that both the aforesaid officials, who had fired shots killing his wife, were under influence of liquor.

3. Pursuant to lodging of FIR, the police swung into action and visited the place of occurrence and also the hospital. Since the complainant's wife had already expired, inquest report was prepared. The dead body was got subjected to post-mortem examination. Statements of the witnesses were recorded in terms of Section 161 Cr.P.C. Rifle allotted to Dinesh Chaturvedi alongwith one empty cartridge and 4 live cartridges as well as rifle allotted to Baljit Singh alongwith 5 live cartridges were taken into possession and sent for ballistic examination.
4. Upon conclusion of investigation, challan was presented against both the accused/appellants in the Court of Judicial Magistrate Ist Class, Ludhiana on 26.06.1999, who committed the case to the Court of Sessions vide order dated 09.08.1999. Learned Additional Sessions Judge, Ludhiana framed charges against both the accused for offence punishable under Section 302 IPC on 07.09.1999. Separate charges for offence punishable under Section 27(3) of the Arms Act were also framed on 24.05.2000. The accused, however, pleaded innocence and claimed trial.
5. The prosecution in order to establish its case examined as many as 17 PWs. The gist of their statements is briefly referred to hereinunder:-



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PW-1 Vinod Kumar (complainant) stated in tune with the allegations got recorded by him in the FIR broadly to the effect that on the day of occurrence while he alongwith his family was returning from Ludhiana to Jalandhar, he was signaled to stop his vehicle i.e. Tata Sumo by the accused and was told to come out of the vehicle and while he was getting out, the accused started firing towards them and that a shot fired by PHG Dinesh Chaturvedi hit his wife. He stated that Baljit Singh also fired a shot, but it missed. He stated that although his wife was taken to hospital, but she could not survive.

PW-2 Dr. S.K.Sharma, who alongwith Dr. Hari Singh and Jai Kishan had conducted post-mortem examination on the dead body of Shaveta on 31.03.1999, proved the post-mortem report as Ex.PD, wherein he described the injuries found on the dead body of Shaveta and opined that the cause of death was due to rupture of the heart and massive haemorrhage as a result of injuries, which were ante mortem and were sufficient to cause immediate death in the ordinary course of nature.

PW-3 Alisha aged about 9 years, who is niece of the complainant and was travelling alongwith him and the deceased on the fateful day, was produced in the Court and the learned trial Court after ascertaining her competence to make a statement recorded the same, wherein she stated that on 30.03.1999, while she alongwith her maternal uncle, maternal aunt Shaveta and Tanya, daughter of his maternal uncle was returning from Ludhiana to Jalandhar, some police officials signaled his uncle to stop the vehicle, which was accordingly stopped. He stated that the police officials told his uncle and others to come out of the vehicle failing which they would be shot. She stated that her aunt was shot at by the accused on her chest and she died at the spot. She categorically stated that both the accused were armed with guns and that while Hindu



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gentleman fired a shot hitting his aunt, the Sikh accused did not fire any shot, but had told his companion to shoot.

PW-4 HC Sukhpal Singh stated that on 30.03.1999, he taken the dead body of Shaveta to the hospital for post-mortem examination and that after the same was conducted, the hospital authorities handed over a parcel of clothes, one vial and a video film, which he further handed over to SI Balbir Singh.

PW-5 Harinder Singh, Draftsman, stated that he had prepared a scaled site plan of the place of occurrence (Ex.P5/A).

PW-6 Constable Baljit Singh, who is a formal witness, has tendered into evidence his affidavit Ex.PW6/A, wherein he deposed that on 01.04.1999, MHC Baldev Singh had handed over to him the case property including 2 rifles, bullets, empty cartridges etc. for depositing the same in the office of FSL, Punjab, Chandigarh, but due to certain objections having been raised by the said office, he returned the case property with MHC Baldev Singh. He stated that thereafter on 07.04.1999, MHC Baldev Singh after removing the objections had again handed over him the case property, which he deposited in the office of FSL, Punjab, Chandigarh on the same day and that as long as the parcels remained in his possession, the same were not tampered with.

PW-7 HC Surjit Singh, who had brought the record pertaining to appointment/posting of Baljit Singh, proved his appointment and last posting order as Ex.PW7/A and PW7/B.

PW-8 HC Harbhajan Singh stated that on 30.03.1999, while he was posted at Police Post Laudowal, he and ASI Avtar Singh came to know about the firing incident near Sutlej bridge and they reached at the spot and thereafter went to Civil Hospital, Phillaur, where police officials were already present and that even the accused



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were present there and that he took into possession one rifle from accused Baljit Singh alongwith 5 live cartridges vide recovery memo Ex.PW8/A.

PW-9 SI Balbir Singh stated that on 30.03.1999, he was posted as SI/SHO Police Station Sadar Ludhiana and upon receipt of a wireless message on the said day regarding the incident in question, he alongwith other police officials proceeded to Civil Hospital, Phillaur, where they met Vinod Kumar and got recorded his statement Ex.PA, on the basis of which FIR Ex.PA/2 came to be lodged. He stated that he prepared inquest report Ex.PW9/A and handed over the dead body of Shaveta to HC Sukhpal Singh for getting post-mortem examination conducted alongwith his request letters Ex.PB & PC. He further stated regarding taking into possession the vehicle i.e. Tata Sumo bearing registration No.HR-01F-5576 belonging to the complainant. He also stated that ASI Avtar Singh produced PHG Dinesh Chaturvedi before him alongwith rifle, 1 empty cartridge and 4 live cartridges, which were taken into possession vide recovery memo Ex.PW-9/C. He stated as regards the entire investigation conducted by him and also proved various memos prepared during course of the same. He stated that upon conclusion of investigation, challan was presented against the accused.

PW-10 Constable Dalbara Singh, who is a formal witness, tendered his affidavit Ex.PW-10/A in evidence, wherein he deposed that on 01.04.1999, MHC Baldev Singh had handed over him the case property including clothes of the deceased Shaveta, blood samples etc. for depositing the same in the office of Chemical Examiner, Patiala, but due to certain objections having been raised by the said office, he returned the case property with MHC Baldev Singh. He stated that thereafter on 05.04.1999, MHC Baldev Singh after removing the objections had again handed over to him



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the case property, which he deposited in the office of Chemical Examiner, Patiala on the same day and that as long as the parcels remained in his possession, the same were not tampered with.

PW-11 SI Harbhajan Singh stated that on 05.04.1999 while he was posted as ASI in Police Station Sadar Ludhiana, he was handed over a Tata Sumo vehicle bearing registration No.HR-01H-5576 by MHC Baldev Singh with a direction to take the same to the office of FSL, Punjab, Chandigarh and he accordingly took the said vehicle to the said office where the same was handed over to the officials concerned for its examination. He further stated that after examination by FSL, Punjab, Chandigarh, the vehicle was handed back to Malkhana of Police Station Sadar, Ludhiana and that he handed over the report of FSL to SHO Balbir Singh.

PW-12 ASI Avtar Singh stated that on 30.03.1999, he was posted as Incharge Police Post Lodewal falling under the jurisdiction of Police Station Sadar Ludhiana and that on the said day, upon receipt of a wireless message regarding an incident of firing at Sutlej bridge, he accompanied by other police officials proceeded to the spot from where he came to know that 2 police officials had fired at some person and that the said person had been shifted to hospital and that accordingly they proceeded to the hospital where they noticed that a mob had gathered. He further stated that the 2 accused i.e. Constable Baljit Singh and PHG Dinesh Chaturvedi were also present there. He stated that both the accused were got medically examined as per orders of SI/SHO Balbir Singh and that a rifle, 4 live cartridge and 1 empty cartridge were recovered from Dinesh Chaturvedi and taken into possession vide recovery memo Ex.PW-9/C.

PW-13 SI Joginder Singh stated that on 03.05.1999, when he was posted as SHO Police Station Sadar Ludhiana, he took up the



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investigation of the case during the course of which, he recorded the statement of HC Malkit Singh and had also received the report of the Chemical Examiner from MHC Baldev Singh and had recorded statements of some other officials and that upon completion of investigation, he had presented the final report against the accused.

PW-14 Constable Harvinder Pal Singh, who is a formal witness, tendered his affidavit Ex.PW-14/A in evidence, wherein he deposed that on 30.03.1999, he had delivered special reports to the Illaqa Magistrate and to other officers.

PW-15 HC Malkit Singh stated that on 30.03.1999, he was posted as MHC, P.P. Laduwal. He produced the summoned record pertaining to the duties assigned to various police officials. He stated that on 30.03.1999, Constable Baljit Singh and PHG Dinesh Chaturvedi had been assigned the duty of holding a *naka* on the bridge of Sutlej river from 8.00 AM to 8.00 PM. He further stated that both of them had been issued .303 rifles alongwith 5 live cartridges each.

PW-16 Nirmala, Havaldar Instructor, stated that in the year 1999, she was posted as Corporal Instructor in the City Company Punjab Home Guard, Ludhiana and was holding the charge of recruitment of Home Guards and that Dinesh Chaturvedi had been recruited on 04.01.1993 and was posted at Police Station Sadar in Police Post Ladhawal on 20.11.1998. During the course of her cross-examination, she stated that no sanction of competent authority to prosecute Dinesh Chaturvedi is available on the file.

PW-17 HC Baldev Singh, who is a formal witness, tendered his affidavit Ex.PW-17/A in evidence, wherein he deposed that on 30.03.1999, he was posted as MHC, Police Station Sadar, Ludhiana and that



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on 31.03.1999 SI/SHO Balbir Singh had handed over him the case property including the clothes of the deceased, 2 rifles, cartridges etc. He also stated with regard to the other articles deposited with him during the course of investigation. He further stated that on 01.04.1999, the case property including rifles, cartridges etc. were sent through Constable Baljit Singh for depositing the same in the office of FSL, Punjab, Chandigarh, which were deposited on 07.04.1999, as certain objections had been made earlier.

6. The prosecution after tendering into evidence report of FSL (Ex.PX and Ex.PY) closed its evidence.
7. Upon closure of the prosecution evidence, statements of accused were recorded in terms of Section 313 Cr.P.C., wherein they denied the case of prosecution in *toto* and pleaded false implication. The relevant extract from the statement of accused Baljit Singh recorded in terms of Section 313 Cr.P.C. is as under:

“I alongwith PHG Ashok Kumar and Dinesh Chaturvedi was holding a *Naka* on the bridge of river Sutlej. We were required to check the vehicles as a small kid, named Harmandeep Singh was abducted from Ludiana and he was un-traceable. During the course of the *Naka*, the Tata sumo driven by Vinod Kumar PW was signaled to stop. I was not carrying any rifle nor any rifle was issued to me and I did not fire any shot. The driver of the Tata Sumo did not care for the signal. I was standing on the front side of the Tata Sumo, which ultimately stopped and in the meantime a shot was fired from the rear side of the TATA Sumo which hit the wife of Vinod Kumar PW. Both I and Dinesh Chaturvedi rushed the injured to civil Hospital, Phillaur in the same vehicle, where she died.

A mob of 300 persons reached the hospital and in the meantime ASI Avtar Singh PW and the Police force also reached there. The mob came furious and man handled and beat us and the Police officials



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including the Investigating Officer, who reached there with the Police force. My name was included in the FIR under pressure of Vinod Kumar PW and mob on the Investigating Officer. I became the victim of the vindictiveness and the anger of Vinod Kumar PW and the mob. Even senior officers felt helpless as they wanted to pacify the crowd. I am innocent.

I was not challenged in this case and the committing Magistrate did not commit me to face the trial nor he could do so. The trial against me is vitiated and the same void-ab-initio.”

8. Accused – Dinesh Chaturvedi in his statement recorded in terms of Section 313 Cr.P.C. while professing his innocence pleaded as under:

“I am innocent and have been falsely implicated in this case. The car turned back but there was suspicion that he was carrying Narcotics. Only one shot was fired of which she succumbed to death. It was Constable who fired the shot from his rifle, which hit the deceased. I belong to Bihar and Baljit Singh accused belongs to Punjab and that is why I have been implicated in this case. I am Homeguard. It was order of the Constable that prevailed. Section 197 Cr.P.C has not been complied with nor reason has been given for non-compliance. The provisions of Homeguard Act has also not been complied with in these circumstances. I am innocent and has been falsely implicated in this case.”

9. The accused, however, did not lead any evidence in their defence.
10. The learned trial Court, upon marshalling the evidence on record, returned its findings to the effect that when the vehicle had been signaled to stop by the accused at a *naka*, it was Baljit Singh, who told co-accused Dinesh Chaturvedi to shoot and pursuant to which Dinesh Chaturvedi fired from his service rifle hitting the wife of complainant leading to her death. Consequently, the trial Court while holding Dinesh Chaturvedi guilty of



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having committed offence punishable under Section 302 IPC, held accused Baljit Singh guilty of having committed offence punishable under Section 302/34 IPC. The trial Court further held accused Dinesh Chaturvedi guilty of having committed offence punishable under Section 27(i) of the Arms Act. Baljit Singh was, however, acquitted of said charge. Aggrieved by the said judgment dated 14.01.2005, both the accused have preferred separate appeals assailing the findings of the trial Court.

11. Learned senior counsel appearing on behalf of appellant Baljit Singh submitted that it is a case where he has falsely been implicated on account of pressure of the mob, which had gathered at the spot and that the story projected in the FIR that both the accused had fired shots has been found to be false qua appellant Baljit Singh inasmuch as the service rifle, which was recovered from him, was having all the 5 live cartridges intact. It has further been submitted that even the post-mortem examination conducted on the dead body of complainant's wife shows that the 2 injuries found on the dead body are in the nature of an entry and exit wound, which would infact be result of one firearm shot only. Learned senior counsel further submitted that the story of prosecution that it was on the asking of appellant Baljit Singh that accused Dinesh Chaturvedi had fired does not appeal to reason, as neither any such direction would have been issued by appellant Baljit Singh nor Dinesh Chaturvedi would be bound by any such direction under the given circumstances.



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12. Learned counsel representing appellant Dinesh Chaturvedi submitted that he has also been falsely implicated and that there is no convincing evidence on record to show that the deceased had died on account of any fire arm shot fired from the rifle allotted to appellant Dinesh Chaturvedi inasmuch as no shell of the cartridge was recovered from the dead body and that although some pieces are stated to have been sent to the FSL, but the same does not inculcate appellant Dinesh Chaturvedi in any manner. Learned counsel representing appellant Dinesh Chaturvedi has further made the following two additional submissions:

- (i) That even if the factum of firing is taken to be correct, still it is a case where both the accused were on official duty and as a matter of fact on the given day they were deputed to perform *naka* duty and were looking for a child, who had been kidnapped and it was under some misconception that the shot came to be fired at the vehicle, which had its glasses tinted and some child were sitting in the vehicle. It has been submitted that under these circumstances it is at best an offence under Section 304 IPC, which would be attracted and not an offence under Section 302 IPC being a case of firing of shot by a public servant in discharge of his official duties believing in good faith that it was necessary to fire, which would be fully covered under Exception 3 to Section 300 IPC;
- (ii) That in any case, the entire proceedings would be *nonest*, as no sanction in terms of Section 197 Cr.P.C. was sought or accorded before launching prosecution against the appellants despite the fact that the act apparently had been done by the accused in discharge of their official duties without any ill-will or mala fide and that too in good faith.



13. Opposing the appeals, learned State counsel submitted that having regard to the fact that it is a case based on direct evidence inasmuch as the complainant (Vinod Kumar), husband of the deceased, is an eye-witness of the occurrence in question and whose testimony has remained unimpeached, coupled with the fact that medical evidence fully corroborates the case of prosecution, conviction of both the appellants as recorded by the learned trial Court is fully justified.
14. We have considered rival submissions addressed before this Court and with the assistance of learned counsel have also perused the record of the case.
15. The evidence with regard to homicidal death needs to be examined at the outset. The prosecution has examined PW-2 Dr. S.K.Sharma, who alongwith Dr. Hari Singh and Jai Kishan had conducted the post-mortem examination on the dead body of Shaveta. PW-12 described the injuries found on the dead body of Shaveta, as under:
 - “1. Lacerated wound 2 cm x 1 cm with irregular margins on the upper part of right side of the chest, in the front. 8 cm from the middle.
 2. Lacerated wound 2.5 cm x 2 cm with everted margins on the back and middle of left side of chest. 8 cm from lower margins of left scapula.”
16. PW-2 opined that the cause of death was due to rupture of the heart and massive haemorrhage as a result of injuries, which were ante mortem and sufficient to cause immediate death in ordinary course of nature. A perusal of the injuries as found to be existing on the dead body of Shaveta clearly reveal that while injury No.1 is on the front side of chest, injury



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No.2 is on the back and middle side of chest. Injury No.2 has everted margins. A metallic piece was also recovered from the wound. During cross-examination, PW-2 stated that entry wound is from chest side and exit wound was at the back of dead body. The said facts suggest that it is a case of injuries caused by a firearm shot. Though the witness was cross-examined on behalf of the accused, but nothing substantial could be elicited during his cross-examination so as to doubt either his veracity or his opinion. Consequently, this Court has no hesitation in holding that it is a case of homicidal death of Shaveta on account of the firearm injury sustained by her.

17. Coming to the ocular version, the complainant (Vinod Kumar) in the FIR alleged that both of them i.e. Dinesh Chaturvedi and Baljit Singh fired shots. While in the witness-box also, PW-1 Vinod Kumar (complainant) stated to the similar effect. PW-3 Alisha, who was a child witness, stated that while the Hindu gentleman fired a shot hitting her aunt, the Sikh accused did not fire shot, but had told his companion to shoot. The factum of recovery of 5 live cartridges alongwith service rifle from Baljit Singh and also the recovery of service rifle alongwith 1 empty cartridge and 4 live cartridges from Dinesh Chaturvedi shows that only 1 shot had been fired by one of the two accused, as both of them had been issued 5 cartridges only as specifically stated by PW-15. As per the FSL report, the shot in question had been fired from rifle No.75-L-8975, Bolt No.CA-21203, Butt No.732, which had been recovered from Dinesh Chaturvedi. The factum of issuance of rifle and cartridges is proved from statement of



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PW-15 HC Malkit Singh. The recovery of rifle was effected on 30.03.1999 itself from Dinesh Chaturvedi by PW-12 ASI Avtar Singh. It is, thus, evident that only 1 shot had been fired by accused Dinesh Chaturvedi, which proved fatal.

18. Role of Dinesh Chaturvedi : The material issue in the instant case would be as to whether the shot fired by appellant Dinesh Chaturvedi was fired with an intention to kill the deceased attracting an offence punishable under Section 302 IPC or as to whether the accused did not have any such intention or as to whether the shot was fired under some mistaken belief, which still could attract an offence punishable under Section 304 IPC.
19. The co-accused Baljit Singh in his statement recorded in terms of Section 313 Cr.P.C. stated that they were required to check the vehicles as a child named Harmandeep Singh had been abducted from Ludhiana and was untraceable. PW-9 SI Balbir Singh, who investigated the case, admitted the said fact during cross-examination while stating as under:

“.....There was a light film pasted on the glasses panes on Tata Sumo. In those days, there was abduction of a child named Harmandeep Singh from Ludhiana and police were holding *naka* at various places to nab the alleged abducted.”
20. It is borne out of from evidence on record that both the accused were serving Police Department and were deputed to perform duty on the given day to hold *naka* at bridge on river Sutlej. It is also borne out that both of them were carrying their service rifles for effective discharge of duties. During the course of *naka*, apart from tracing the missing child, who was



reported to have been kidnapped, the accused being police officials were also expected to be vigilant and check criminal activity. Dinesh Chaturvedi in his statement recorded in terms of Section 313 Cr.P.C. while denying that he had fired stated that the vehicle had been stopped on suspicion that some narcotics was being transported, as the driver had tried to turn back the vehicle. It is a case where only one single shot was fired and which unfortunately hit the wife of the complainant sitting on the rear seat. The facts suggest that it is a case where a shot came to be fired by Dinesh Chaturvedi in good faith under some mistaken belief that the same was required to be fired. It is not a case that they had any enmity with the complainant or with the deceased or that their intention was to loot them. The subsequent conduct of the appellants will also be relevant inasmuch as after the incident the appellants were present in the hospital itself where the deceased had been taken which would also show that they did not have any dubious intentions when the shot came to be fired. Under the given circumstances, in our opinion, it is a case, which would fall under one of the exceptions to section 300 IPC. The relevant provisions of IPC are extracted herein-under:

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

Explanation 1. - A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2. - Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.



Explanation 3. - The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

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

2ndly. - It is done with intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or –

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

4thly. - If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1. - x x x

Exception 2. – x x x

***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. – x x x

Exception 5. – x x x

21. The facts of the given case where appellant Dinesh Chaturvedi, while on duty, fired one shot at the deceased under some mistaken belief that it was required, in good faith, would fall under Exception 3 to section 300 IPC, taking out the case from the ambit of section 300 IPC. Consequently, the act of appellant Dinesh Chaturvedi would attract an offence section 299 IPC punishable under section 304 IPC.



22. Role of Baljit Singh : As regards role of Baljit Singh, the complainant (PW-1) has alleged in the FIR and also while deposing in the witness box that both of the accused had fired, but the other eye-witness PW-3 categorically stated that only the *hindu* accused fired and that the *sikh* accused did not shoot but had told his companion to shoot. As already discussed in preceding para, the evidence clearly establishes it to be a case of firing of a single shot only by Dinesh Chaturvedi. While the presence of Baljit Singh alongwith Dinesh Chaturvedi at the spot is not in dispute as both of them were admittedly deputed to hold 'naka' on the bridge on river Sutlej but Baljit Singh not having fired any shot and there being some contradiction in evidence as regards his role and the complainant not having stated anything regarding Baljit Singh having told his co-accused Dinesh Chaturvedi to shoot, the role of Baljit Singh in the incident in question is rendered doubtful. He can neither be attributed any *mens-rea* nor can be held vicariously liable for offence, if any, committed by co-accused Dinesh Chaturvedi.

23. Sanction for Prosecution : Having held that the shot came to be fired by Dinesh Chaturvedi under some mistaken belief in discharge of his official duties which would fall within the ambit of "culpable homicide not amounting to murder" punishable under section 304 IPC, another question which still survives is as to whether 'sanction' in terms of Section 197 Cr.P.C. was required to be taken before prosecuting the accused/appellants. Section 197 Cr.P.C. reads as under:



“197. Prosecution of Judges and public servants. - (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his officer save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

- (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government
- (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State of the State Government:

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]

[*Explanation.* - For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, [section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB,] [Inserted by Criminal Law (Amendment) Act, 2013] or section 509 of the Indian Penal Code.]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members (of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein the expression "State Government" were substituted.

[(3-A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a



Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government

[(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

24. Section 5 of the Punjab Home Guards Act, 1947 clarifies that a person appointed as a ‘Home Guard’ would have protection as enjoyed by public servant in the matter of prosecution. Section 5 of the said Act reads as under:

“5. **Powers, protection and control** – (1) A member of the Punjab Home Guards when called out under Section 4 shall have the same powers, privileges and protection as an officer of police appointed under any law for the time being in force.

(2) No prosecution shall be instituted against a member of the Punjab Home Guards in respect of anything done or purporting to be done by him in the discharge of his functions as such member, except with the previous sanction of the State Government.”

25. In **K. Kalimuthu Vs. State by D.S.P., (2005) 4 SCC 512**, the Hon’ble Supreme Court held as under:

“11. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission



must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The Section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the Section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in *Matajog Dobey vs. H.C.Bhari* (AIR 1956 SC 44) thus:

"The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty ... there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

12. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to official to which applicability of Section 197 of the Code cannot be disputed."

26. While discussing the scope of Section 197 Cr.P.C. as regards requirement of sanction for prosecuting a public servant in respect of an act done in discharge of his official duty, Hon'ble Supreme Court in Sankaran



Moitra Vs. Sadhna Das & another, (2006) 4 SCC 584, in a matter arising out of clash between the political parties at a polling booth, where the police gave beatings to a person resulting in his death, held as under:

“17. The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty Section 197(1) of the Code cannot be by-passed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197(1) of the Code of Criminal Procedure. We are therefore satisfied that the High Court was in error in holding that sanction under Section 197(1) was not needed in this case. We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of learned counsel for the complainant that this is an eminently fit case for grant of such sanction.”

27. In a recent judgment reported as **Om Prakash Yadav Vs. Niranjana Kumar Upadhyay & others, (2024) SCC Online SC 3726**, the Hon’ble Supreme Court held as under:

65. Thus, the legal position that emerges from a conspectus of all the decisions referred to above is that it is not possible to carve out one universal rule that can be uniformly applied to the multivarious facts and circumstances in the context of which the protection under Section 197 CrPC is sought for. Any attempt to lay down such a homogenous standard would create unnecessary



rigidity as regards the scope of application of this provision. In this context, the position of law may be summarized as under: -

- (i) The object behind the enactment of Section 197 CrPC is to protect responsible public servants against institution of possibly false or vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act in their official capacity. It is to ensure that the public servants are not prosecuted for anything which is done by them in the discharge of their official duties, without any reasonable cause. The provision is in the form of an assurance to the honest and sincere officers so that they can perform their public duties honestly, to the best of their ability and in furtherance of public interest, without being demoralized.
- (ii) The expression “any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty” in Section 197 CrPC must neither be construed narrowly nor widely and the correct approach would be to strike a balance between the two extremes. The section should be construed strictly to the extent that its operation is limited only to those acts which are discharged in the “course of duty”. However, once it has been ascertained that the act or omission has indeed been committed by the public servant in the discharge of his duty, then a liberal and wide construction must be given to a particular act or omission so far as its “official” nature is concerned.
- (iii) It is essential that the Court while considering the question of applicability of Section 197 CrPC truly applies its mind to the factual situation before it. This must be done in such a manner that both the aspects are taken care of viz., on one hand, the public servant is protected under Section 197 CrPC if the act complained of falls within his official duty and on the other, appropriate action be allowed to be taken if the act complained of is not done or purported to be done by the public servant in the discharge of his official duty.
- (iv) A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such that it lies within the scope and range of his official duties. The act complained of must be integrally connected or directly linked to his duties as a public servant for the purpose of affording protection under Section 197 CrPC. Hence, it is not the duty which requires an examination so much as the “act” itself.
- (v) One of the foremost tests which was laid down in this regard was - whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.
- (vi) Later, the test came to be re-modulated. It was laid down that there must be a reasonable connection between the act done and the discharge of the official duty and the act must bear such relation to the duty such that the accused could lay a reasonable, but not a pretended or fanciful claim, that his actions were in the course of performance of his duty. Therefore, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be committed by the public servant either in his official capacity or



- under the color of the office held by him such that there is a direct or reasonable connection between the act and the official duty.
- (vii) If in performing his official duty, the public servant acts in excess of his duty, the excess by itself will not be a sufficient ground to deprive the public servant from protection under Section 197 CrPC if it is found that there existed a reasonable connection between the act done and the performance of his official duty.
 - (viii) It is the “quality” of the act that must be examined and the mere fact that an opportunity to commit an offence is furnished by the official position would not be enough to attract Section 197 CrPC.
 - (ix) The legislature has thought fit to use two distinct expressions “acting” or “purporting to act”. The latter expression means that even if the alleged act was done under the color of office, the protection under Section 197 CrPC can be given. However, this protection must not be excessively stretched and construed as being limitless. It must be made available only when the alleged act is reasonably connected with the discharge of his official duty and not merely a cloak for doing the objectionable act.
 - (x) There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down such a rule. However, a “safe and sure test” would be to consider if the omission or neglect on the part of the public servant to commit the act complained of would have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, the protection under Section 197 CrPC can be granted since there was every connection with the act complained of and the official duty of the public servant.
 - (xi) The provision must not be abused by public servants to camouflage the commission of a crime under the supposed color of public office. The benefit of the provision must not be extended to public officials who try to take undue advantage of their position and misuse the authority vested in them for committing acts which are otherwise not permitted in law. In such circumstances, the acts committed must be considered de hors the duties which a public servant is required to discharge or perform.
 - (xii) On an application of the tests as aforesaid, if on facts, it is prima facie found that the act or omission for which the accused has been charged has a reasonable connection with the discharge of his official duty, the applicability of Section 197 CrPC cannot be denied.
28. Admittedly, no sanction from the Government was taken before prosecuting the appellants both of whom were ‘public servants’ serving Police Department and were performing official duties. Under these circumstances, even if the accused had, to some extent, exceeded in use of force in performing their official duties and a shot had been fired under



(25)

misconception, the case would attract provisions of Section 197 Cr.P.C. No sanction having been accorded by the State before launching prosecution against accused, the entire proceedings would be *nonest* in the eyes of law.

29. In view of the discussion made above, both the appeals merit acceptance and are hereby accepted. Both the appellants namely Baljit Singh and Dinesh Chaturvedi are acquitted of all the charges framed against them.
30. A copy of this judgment be sent to the quarters concerned for necessary compliance.

(GURVINDER SINGH GILL)
JUDGE

13.02.2025
Vimal

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**