SURESH SINGHAL

v.

STATE (DELHI ADMINISTRATION)

(Criminal Appeal No.1548 of 2011)

FEBRUARY 02, 2017

[S.A. BOBDE AND L. NAGESWARA RAO, JJ.]

Penal Code, 1860 – ss.302 and 304 r/w s.34 – Double murder – Dispute over sale of property – Prosecution case was that on the fateful day, deceased and his brothers were in the office of PW-2 where appellant came with his father and another person – As soon as they entered the office of PW-2, altercation took place between the deceased and the appellant whereafter appellant took out his revolver and fired shots – The two brothers died in the incident – Conviction of appellant and his father for murder – Challenged – Held: Evidence proved that there was a scuffle in which the appellant was pinned to the floor and deceased attempted to strangulate the appellant – In the scuffle, appellant may have pulled out his gun and upon seeing the gun, the deceased may have released the appellant and started running upon which the appellant may have fired the shot which hit deceased on back – This also explains the trajectory of the shot in which the bullet entered the body below the right shoulder, and travelled upwards without exiting – Medical evidence was also to the effect that shot was fired from a distant range – No doubt, the appellant exceeded the power given to him by law in order to defend himself but the exercise of the right was in good faith, in his own defence and without premeditation – The homicide in the instant case thus did not amount to murder in the view of Exception 2 to s.300 – As regards the killing of second brother, the office in which firing took place was a small area – Yet PW-3 could not specifically state that appellant shot the second deceased – Thus, it was not stated with certainty that the shots which hit the second deceased were fired by the appellant – Conviction of the appellant u/s.302 for murder is set aside and his conviction u/s.304 is maintained – Since the appellant has already undergone a sentence of 13½ years, he is sentenced u/s.304 to the period already undergone.

A *Penal Code, 1860 – s.97 – Right to private defence – Held: A mere reasonable apprehension is enough to put the right of self-defence into operation and it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence.*

B **Partly allowing the appeal, the Court**

HELD: 1. A close examination of the evidence showed that a scuffle did take place. In this scuffle, the deceased alone, or along with his two brothers tried to strangulate the appellant. The appellant reached for his revolver, upon which the deceased C **released him and turned around to run away. At this point, the appellant shot at him, either still lying down or having got up. This probablizes and explains the fact that it was not a close shot and that the bullet entered the body below the right shoulder of the deceased at the back and travelled upwards. There was no blackening, tattooing or charring around the bullet entry wound.** D **In fact, the doctors specifically stated that the shot was fired from a distant range. It is well known that the shooting from close quarters chars or blackens the body. The statement of the doctor that it was shot from a distant range has not been challenged in the cross-examination. There is another reason which lends** E **credence to the assumption that the shot was not fired from close quarters, and that is the fact that the bullet did not exit the body. Indeed this happens when the bullet being fired from a distance loses its velocity. Thus, there was no reliable evidence to show that the appellant shot the deceased at close quarters when he was being strangulated. The shot was in all probability fired when** F **the deceased released the appellant during the scuffle, and on seeing him reach for his gun moved away to escape after turning around. [Paras 15-17] [653-G-H; 654-B-C, F-G]**

2. Altogether 7 bullets were fired, and no empty cartridge cases were recovered from the scene of the crime. One empty G **.32 bore Smith & Wesson revolver was recovered from the appellant. One .32 bore Smith & Wesson revolver was recovered from his father. One .22 HP rifle and nine empty cartridges were also recovered from the roof of his house. One .32 bullet was taken out from the body of deceased. Three .32 bullets were** H **recovered from the body of second deceased. All the .32 cartridge**

cases were found to have been fired from a single .32 calibre fire arm, but none of them from any of the two .32 revolvers which were seized. The .32 lead bullet recovered from the body of deceased was fired from .32 calibre fire arm. The reports states that this bullet could have been fired from the revolver seized from the father of the appellant, and not from the revolver seized from the appellant. However, a definite opinion was not given for want of sufficient characteristic marks on the crime bullets. The three bullets recovered from the body of the deceased could not be linked with any of the .32 revolvers seized. The ballistic expert report shows that none of the bullets were recovered from the .32 weapon seized from the appellant. It is thus not possible to determine the weapon that was used by the appellant. [Paras 18, 20] [655-A-B, D-E]

Darshan Singh v. *State of Punjab and Another* (2010) 2 SCC 333 : [2010] 1 SCR 642 – relied on.

3.1 The appellant may have apprehended a danger to his life when the deceased and his brothers started strangulating him after pushing him to the floor.

A mere reasonable apprehension is enough to put the right of self-defence into operation and it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the appellant apprehended that such an offence is contemplated and is likely to be committed if the right of private defence is not exercised. Given the fact that the deceased and the others were attempting to strangulate the appellant, it would have been unrealistic to expect the appellant to "modulate his defence step by step with any arithmetical exactitude". This Court has held that a person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or upon being directly threatened. The appellant may have been put in such a position. [Paras 23, 24] [657-D-G]

3.2 No doubt that the appellant exceeded the power given to him by law in order to defend himself but the exercise of the right was in good faith, in his own defence and without

A **premeditation. The homicide in the present case thus does not amount to murder in the view of Exception 2 to Section 300 of IPC. The Sessions Court and the High Court rightly observed that the homicide was not the result of premeditation but rather, as the evidence suggests, the shooting took place in a sudden fight in the heat of passion. It is not possible to accept the argument of the prosecution that the appellant took undue advantage of the situation and used the gun even though the deceased and his brothers were unarmed. Given the murderous assault on the appellant and the possibility of being attacked again, may be with arms or may be with the help of the other persons, it is not possible to attribute undue advantage to have been taken by the appellant. In such a situation it would be unrealistic to expect the appellant to calmly assess who would have the upper hand before exercising his right of private defence. In the circumstances of the case and the findings of the Sessions Court and the High Court, the homicide falls within Exception 4 to Section 300 of IPC and does not amount to murder. [Paras 25, 27 and 28] [657-H; 658-A, G; 659-A-C]**

3.3. It is not possible to accept the argument that merely because the father of the appellant had a gun, and that he could have used it to save his son, he fired the shot. There is no foundation in the evidence of any of the witnesses to suggest that the father of the appellant fired at the deceased from any place in the room to save his son. Even otherwise, shooting at two people grappling on the floor would have been a risk since the shot could have injured either or both persons. The strong possibility is that there was a scuffle in which the appellant was pinned to the floor and attempted to be strangulated by the deceased. The appellant may have pulled out his gun and upon seeing the gun, the deceased may have released the appellant and started running upon which the appellant fired the shot which hit him from the back side. This also explains the trajectory of the shot in which the bullet entered the body below the right shoulder, and travelled upwards without exiting. In these circumstances, the appellant is undoubtedly guilty of causing death to the deceased with the intention of causing death or of causing such bodily injury as is likely to cause death and therefore guilty

of the offence under Section 304 of the IPC. The appellant has already undergone a sentence of 13 ½ years as on date. He is thus sentenced to the period already undergone. [Paras 30-32] [659-E-G; 660-A-B]

4.1. The appellant has also been convicted under Section 302 IPC for the murder of deceased-KL. PW-3 deposed that the appellant fired at his brother, and when PW-3 and his brothers tried to catch hold of the appellant, the appellant told his father to finish all the brothers. He then stated that the father of the appellant took out a revolver from his pocket and both the appellant and his father started firing at him and his brother-KL. He stated that he received two bullets on his stomach, and one bullet grazed him over the neck portion in the front. When he started running out, he was hit by another bullet on the back of his right shoulder. When PW-3 and KL started running out, he heard the appellant tell RL to go outside, get the gun from the vehicle and that the fourth brother should not be spared. This witness survived the shooting with two bullets still lodged in his body. The office in which the firing took place was a small area. Yet this witness does not specify that the appellant shot him. He generally states that appellant and his father started firing at him and his brothers. Thus, it is difficult to say with certainty that the shots which hit KL were fired by the appellant. In these circumstances all that can be said is that a shot from the appellant *may* have hit KL or *may not* have hit KL. This benefit of doubt in law must go to the appellant. [Paras 33-36] [660-C-G]

4.2. There is a serious doubt whether it can be held as having been proved beyond reasonable doubt that the appellant attempted to murder brother of the deceased for which he has been convicted. It is not possible to approve the observation of the High Court that because the appellant and his father were armed "it is only the appellant and/or his father who could be responsible for the firing resulting in the murder of KL and the deceased. The appellant killed the deceased in the exercise of the right of private defence. His father may or may not have acted out of the desire to protect the appellant. He did not share the same intention as that of the appellant. It is not possible to attribute common intention to kill the three brothers to both the

A **appellant and his father. The conviction of the appellant under section 302 IPC for murder of KL is set aside and his conviction under section 304 IPC is maintained. Since the appellant has already undergone a sentence of 13 ½ years as on date, he is sentenced under section 304 IPC to the period already undergone. [Paras 37-40] [660-G-H; 661-A-D]**

B *Modi's Textbook of Medical Jurisprudence and Toxicology (25th Edition). p. 631"* – **referred to.**

Case Law Reference

[2010] 1 SCR 642 relied on Para 22

C CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1548 of 2011.

From the Judgment and Order dated 01.09.2010 of the High Court of Delhi at New Delhi in Criminal Appeal No. 232 of 1997.

D Sushil Kumar, S. K. Aggarwal, Sr. Advs., Aditya Kumar, S. K. Sinha, Arun K. Sinha, Advs. for the Appellant.

P. K. Dey, R. K. Verma, Ms. Rashmi Malhotra, Ms. Sadhna Sandhu, B. K. Prasad, Ms. Reena Rai, Ms. Shreyasi Chakraborty, Manish, Mrs. Anil Katiyar, Advs. for the Respondent.

E The Judgment of the Court was delivered by

S. A. BOBDE, J. 1. This appeal is directed against the judgment dated 01.09.2010 of the Delhi High Court in Criminal Appeal No.232 of 1997 filed by the appellant-Suresh Singhal against his conviction and the sentence awarded to him. The appeal filed by the State seeking death F penalty for the appellant and against the acquittal of Roshal Lal was dismissed by the High Court in Criminal Appeal No.226 of 1997.

THE INCIDENT

2. The appellant was prosecuted for the incident that occurred G on the 04.03.1991 at about 5.15 pm. The deceased-Shyam Sunder and Kishan Lal, both brothers, were killed in the incident at the office of Lala Harkishan Dass located at Rajendra Park, Nangloi. The statement of Lala Harkishan Dass was recorded. He had arranged a meeting for settling a dispute that had arisen between the appellant and the deceased. The appellant had apparently agreed to sell a property through a property

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dealer, namely the deceased-Shyam Sunder. The purchasers were the Gurdaspur Party. Apparently there was some misunderstanding between the parties and eventually a meeting was arranged at the office of Lala Harkishan Dass.

3. The deceased-Shyam Sunder and his two brothers Hans Raj and Kishan Lal were already at the office of Lala Harkishan Dass. The appellant-Suresh Singhal and his father Pritpal Singhal accompanied by another man (Roshan Lal) reached the office at about 5.00 pm. As soon as they entered the office, there was an altercation between the appellant and the deceased. The appellant took out his revolver and shot Shyam Sunder. Thereafter, the appellant and his father Pritpal Singhal who had come to the office in a car, left the car behind and fled the place in the car of another visitor.

In the incident Shyam Sunder and Kishan Lal were killed.

4. The Sessions Court convicted the appellant for the murder of Shyam Sunder under Sections 302 and 304 read with Section 34 of Indian Penal Code (hereinafter referred to as 'IPC') for the murder of Kishan Lal. His co-appeallant-Pritpal Singhal who died on 28.03.2007, during the pendency of the suit was also convicted under Section 307 read with Section 34 of IPC for attempting the murder of Hans Raj. The third accused Roshan Lal was acquitted.

WITNESSES TO THE SHOOTING

5. The actual shooting was claimed to have been witnessed by Lala Harkishan Dass (PW-2), Hans Raj (PW-3) and Raj Kumar (PW-4). Lala Harkishan Dass (PW-2) was declared hostile. Hans Raj (PW-3) is the injured eye-witness, and the brother of the deceased-Shyam Sunder.

6. Two distinct versions about the actual shooting have arisen from the deposition of the witnesses. One version is that there was no scuffle before which the appellant fired at the deceased. The other is that there was a scuffle in which the appellant was attempted to be strangulated.

NO SCUFFLE

7. The first version is mainly deposed to by Hans Raj (PW-3). Hans Raj is the brother of the deceased. He went to the office of Lala

A Harkishan Dass where the parties had decided to meet to resolve the dispute. He deposed that the moment the deceased entered the room, the appellant asked his brother-the deceased, to tell him what had happened yesterday. The deceased got up and responded to it by asking the appellant whether he had come to settle the dispute or to quarrel. The appellant said that there won't be any quarrel but something different would happen. This witness said that "he then took out a revolver from his coat pocket and fired at my brother-Shyam Sunder." This is all that the witness stated about the actual shooting. Thereafter this witness stated that he tried to catch hold of the appellant but the appellant exhorted his father to finish all the brothers. Thereafter, Pritpal Singhal took out a revolver from his pocket and both the appellant as well as Pritpal Singhal started firing at him and his brother-Kishan Lal. In the firing he was injured and received one bullet in his stomach. This version significantly does not speak of any scuffle preceding the shooting. In the cross-examination later on, he specifically stated in the cross-examination that there was no scuffle in which the deceased tried to strangulate the appellant. This witness thus clearly stated that the appellant shot the deceased as soon as he rose.

8. The narration of this witness is significant since he suggests that the deceased was sitting when the appellant entered the room and after a menacing exchange of words, shot the deceased as soon as he got up.

9. Another witness Tarsem Kumar (P.W. 30) stated in his deposition that "at that time, Shyam Sunder was sitting by my side on a sofa and he said that he has been shot at with a bullet. I did not hear anything except this. I did not even hear the noise of firing".

10. PW-30 in his deposition suggests that the appellant shot him from the front as he got up. This throws a doubt on the credibility of this witness because the entry wound of the bullet is on the back of deceased, and not in the front. Thus we are not inclined to accept the narration of PW-30 and PW-3, who have both stated that the appellant fired at the deceased from the front.

SCUFFLE

11. The other version deposed by Subhash Chand Mahajan (PW-23) and Sarover Kumar (PW-27) is that there was a scuffle between the three brothers i.e. deceased-Shyam Sunder, Kishan Lal and Hans

Raj on one hand, and the appellant-Suresh Singhal on the other hand. The deceased tried to strangulate the appellant as they fell during the struggle, and thereafter pulled out his gun and shot the deceased. He then exhorted his father to shoot the others. A

12. Subhash Chand Mahajan (PW-23) stated in his cross examination that he saw the appellant on the floor being strangulated. The witness stated that there was a scuffle and thereafter a shot fired. B

13. The other witness Sarover Kumar (PW-27) belongs to the Gurdaspur Party and as such is not a direct party to the dispute between the appellant and the deceased. He stated that immediately after the appellant-Suresh Singhal and Pritpal Singhal arrived, there was a scuffle between the appellant-Suresh Singhal on one hand and the three brothers including the deceased-Shyam Sunder on the other. He deposed that there were shouts of "Chhodo Chhodo" during the scuffle and then the deceased-Shyam Sunder cried "Hai Mujhe Goli Lag Gayi" i.e. 'I have been shot'. He stated that he immediately ran out of the side gate along with the other persons and hid behind the cement bags. The testimony of this witness has remained unshaken in cross-examination. In fact in cross-examination, the witness stated that a scuffle took place within the twinkling of an eye after the appellant and the others entered the office. C D

14. The stark difference between the two versions is that of the scuffle preceding the incident of the shooting. Whether there was a scuffle or not determines the tenability of the main submission advanced by Mr. Sushil Kumar, the learned senior counsel, that the appellant acted in the exercise of his right of private defence and shot the deceased. It may be noted that, both the Sessions Court and the High Court have found that there was a sudden fight in the course of which a common intention developed between the appellant and his father to cause the death of the deceased-Shyam Sunder and Kishan Lal. E F

15. Having closely examined the evidence, we are of the view that in fact a scuffle did take place. In this scuffle, Shyam Sunder alone, or along with his two brothers tried to strangulate the appellant-Suresh Singhal. The appellant reached for his revolver, upon which the deceased released him and turned around to run away. At this point the appellant shot at him, either still lying down or having got up. This probablizes and explains the fact that it was not a close shot and that the bullet entered G H

A the body below the right shoulder of the deceased at the back and travelled upwards.

NOT A CLOSE SHOT

16. The shot in question was obviously not a close shot. There was no blackening, tattooing or charring around the bullet entry wound. B In fact, the doctors specifically stated that the shot was fired from a distant range. It is well known that the shooting from close quarters chars or blackens the body. It would be germane to quote from *"Modi's Textbook of Medical Jurisprudence and Toxicology (25th Edition). p. 631"* with reference to the above:-

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> "When there is a close shot that is in the range of powder blast and the flame is within one to three inches, for small arms there is a collar of soot and grease (if present on the bullet) around the circular wound of entry. Singed hairs may be seen if the body is not covered with clothing. Partially burnt and unburnt grains of D powder are blasted into the skin causing a tattooing which cannot be easily wiped off. Wadding, pieces of clothing or other debris may be *found* lodged in the wound. The entry wound of a revolver fired very near or in contact with the skin is generally stellate or cruciform in shape instead of being circular. When it is fired beyond a distance of 12 inches, there are no powder marks of E soot or heat effects around the wound. If the revolver is fired close to the skin but held at an angle, the smudging and tattooing is limited only to one side of the bullet hole. The *wound* of exit is often larger than the wound of entrance, and its edges are irregular and everted, but free from scorching and tattooing."

F 17. The statement of the doctor that it was shot from a distant range has not been challenged in the cross-examination. There is another reason which lends credence to the assumption that the shot was not fired from close quarters, and that is the fact that the bullet did not exit the body. Indeed this happens when the bullet being fired from a distance G loses its velocity. We have made these observations to support the inference that there is no reliable evidence to show that the appellant shot the deceased at close quarters when he was being strangulated. The shot was in all probability fired when the deceased released the appellant during the scuffle, and on seeing him reach for his gun moved away to escape after turning around.

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RECOVERY AND BALLISTIC EXPERT REPORT

18. We must at this stage advert to the recovery from the scene and the ballistic expert report. Altogether 7 bullets were fired, and no empty cartridge cases were recovered from the scene of the crime. One empty .32 bore Smith & Wesson revolver was recovered from Suresh Singhal. One .32 bore Smith & Wesson revolver was recovered from Pritpal Singhal. One .22 HP rifle and nine empty cartridges were also recovered from the roof of Pritpal Singhal's house. One .32 bullet was taken out from the body of deceased-Shyam Sunder. Three .32 bullets were recovered from the body of deceased Kishan Lal.

19. The appellant and his father both had licensed revolvers but the forensic report does not definitely disclose that the bullets came from the licensed guns belonging to the appellant and Pritpal Singhal.

20. Products of combustion of cartridge powder were detected only in the barrel of the .32 revolver recovered from Pritpal Singhal. Products of combustion of cartridge powder could not be detected in the barrel of the revolver recovered from the appellant or the .22 HP rifle. All the .32 cartridge cases were found to have been fired from a single .32 calibre fire arm, but none of them from any of the two .32 revolvers which were seized. The .32 lead bullet recovered from the body of deceased was fired from .32 calibre fire arm. The reports states that this bullet could have been fired from the revolver seized from Pritpal Singhal, and not from the revolver seized from the appellant. However, a definite opinion was not given for the want of sufficient characteristic marks on the crime bullets. The three bullets recovered from the body of Kishan Lal could not be linked with any of the .32 revolvers seized. The ballistic expert report shows that none of the bullets were recovered from the .32 weapon seized from the appellant. It is thus not possible to determine the weapon that was used by the appellant–Suresh Singhal.

PRIVATE DEFENCE

21. With regard to the evidence that the appellant was being assaulted and in fact attempted to be strangulated, it needs to be considered whether the appellant shot the deceased in the exercise of his right of private defence. Such a right is clearly available when there is a reasonable apprehension of receiving the injury.

22. The right of private defence is contemplated by Section 97 of IPC which reads as follows:-

A "Section 97. Right of private defence of the body and of property.— Every person has a right, subject to the restrictions contained in section 99, to defend—

First — His own body, and the body of any other person, against any offence affecting the human body;

B Secondly —The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, rob-bery, mischief or criminal trespass."

C In *Darshan Singh* vs. *State of Punjab and Another*[1], this court laid down the following principles which emerged upon the careful consideration and scrutiny of a number of judgments as follows:-

"58. The following principles emerge on scrutiny of the following judgments:

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(i) Self-preservation is the basic human instinct and is duly recognised by the criminal jurisprudence of all civilised countries. All free, democratic and civilised countries recognise the right of private defence within certain reasonable limits.

E (ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order

F to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

G (iv) The right of private defence commences as soon as a reasonable apprehension arises and it is coterminous with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

H [1](2010) 2 SCC 333

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened."

23. Having regard to the above, we are of the view that the appellant reasonably apprehended a danger to his life when the deceased and his brothers started strangulating him after pushing him to the floor. As observed by this Court a mere reasonable apprehension is enough to put the right of self-defence into operation and it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the appellant apprehended that such an offence is contemplated and is likely to be committed if the right of private defence is not exercised.

24. It was argued by Mr. P.K. Dey, learned counsel for the State, that the deceased and his brothers were unarmed and there was no need for the appellant to have used the gun. Given the fact that the deceased and the others were attempting to strangulate the appellant, it would have been unrealistic to expect the appellant to "modulate his defence step by step with any arithmetical exactitude". This Court has held that a person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or upon being directly threatened. We are inclined to think that the appellant had been put in such a position.

25. We have no doubt that the appellant exceeded the power given to him by law in order to defend himself but we are of the view

A that the exercise of the right was in good faith, in his own defence and without premeditation. In this regard, it would be apposite to reproduce the observation of Sessions Court which is as follows:-

> "Since I feel that the prosecution witnesses are hiding something at the introduction stage of the story, I will not impute a prior
B concert or intention to the accused. I have no doubt that tempers got fayed at the spot itself and whatever happened was not a result of prior meeting of minds amongst the accused persons."

26. The High Court has also observed as follows:-

> "In the facts and circumstances of the case, we find it difficult
C to accept that the murder of Shyam Sunder and Kishan Lal had been preplanned. Had Suresh Singhal and his father late Pritpal Singhal preplanned the murder, they would have chosen some other place to execute their plan and would not have done it in the office of the informant, in the presence of a number of persons. The convict Suresh Singhal and his father late
D Pritpal Singhal knew that a number of persons including the informant Lala Harkishan Dass and the members of the Gurdaspur Party would be present in the office of the informant on that day and in the event of Krishan Lal and his brother(s) having murdered there, all these persons would be eye-
E witnesses against them. It is, therefore, highly unlikely that they would have planned to commit murders at that place. It is true that both of them were armed with loaded revolvers when they came to the office of the informant on that day. But that in our view, in the facts and circumstances of the case, does not necessarily mean that they had preplanned the murder,
F though it does show that they were fully prepared to meet any eventuality and go to any extent including use of the firearms they were carrying with them."

27. The homicide in the present case thus does not amount to murder in the view of Exception 2 to Section 300 of IPC[2]. We agree
G with the observations of the Sessions Court and the High Court that the homicide was not the result of premeditation but rather, as the evidence

[2] "Exception 2. – Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence 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 defence without premeditation, and without any intention of doing more harm than
H is necessary for the purpose of such defence."

suggests, the shooting took place in a sudden fight in the heat of passion. It is not possible to accept the argument of the prosecution that the appellant took undue advantage of the situation and used the gun even though the deceased-Shyam Sunder and his brothers were unarmed. Given the murderous assault on the appellant and the possibility of being attacked again, may be with arms or may be with the help of the other persons, it is not possible to attribute undue advantage to have been taken by the appellant. In such a situation it would be unrealistic to expect the appellant to calmly assess who would have the upper hand before exercising his right of private defence.

28. In the circumstances of the case and the findings of the Sessions Court and the High Court, we find that the homicide falls within Exception 4 to Section 300 of IPC[3] and does not amount to murder.

29. Mr. Sushil Kumar, the learned senior counsel for the appellant, argued that since the evidence states that the shot was fired from a distance and the deceased was on top of the appellant in the course of the scuffle during which he was being strangulated, the fatal shot could have only been fired by Pritpal Singhal. According to the learned counsel, he was the only other person who had a gun and had every reason to exercise the right of private defence to protect his son from strangulation.

30. It is not possible for us to accept the argument that merely because Pritpal Singhal had a gun, and that he could have used it to save his son, he fired the shot. There is no foundation in the evidence of any of the witnesses to suggest that Pritpal Singhal fired at the deceased-Shyam Sunder from any place in the room to save his son. Even otherwise, shooting at two people grappling on the floor would have been a risk since the shot could have injured either or both persons. It is therefore, not possible for us to accept this submission.

31. The strong possibility is that there was a scuffle in which the appellant was pinned to the floor and attempted to be strangulated by the deceased. The appellant may have pulled out his gun and upon seeing the gun, the deceased may have released the appellant and started running upon which the appellant fired the shot which hit him from the back side. This also explains the trajectory of the shot in which the bullet entered the body below the right shoulder, and travelled upwards without exiting.

[3] "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's having taken undue advantage or acted in a cruel or unusual manner."

A 32. In these circumstances, we are of the view that Suresh Singhal is undoubtedly guilty of causing death to Shyam Sunder with the intention of causing death or of causing such bodily injury as is likely to cause death and therefore guilty of the offence under Section 304 of the IPC. We are informed that the appellant has already undergone a B sentence of 13 ½ years as on date. We thus sentence him to the period already undergone.

KISHAN LAL'S DEATH

33. The appellant has also been convicted under Section 302 IPC for the murder of Kishan Lal. Hans Raj (PW-3) deposed that the C appellant fired at his brother, and when he (PW-3) and his brothers-Raj Kumar and Kishan Lal, tried to catch hold of the appellant, the appellant told his father to finish all the brothers. He then stated that Pritpal Singhal took out a revolver from his pocket and both the appellant and his father started firing at him and his brother-Kishan Lal. He stated that he received two bullets on his stomach, and one bullet grazed him D over the neck portion in the front. When he started running out, he was hit by another bullet on the back of his right shoulder.

34. When he and Kishan Lal started running out, he heard Pritpal Singhal tell Roshan Lal to go outside, get the gun from the vehicle and that the fourth brother should not be spared.

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35. It may be remembered that this witness survived the shooting with two bullets still lodged in his body. The office in which the firing took place was a small area. Yet this witness does not specify that the appellant shot him. He generally states that appellant and his father started firing at him and his brothers. Thus, it is difficult to say with F certainty that the shots which hit Kishan Lal were fired by Suresh Singhal.

36. In these circumstances all that can be said is that a shot from the appellant *may* have hit Kishan Lal or *may not* have hit Kishan Lal. This benefit of doubt in law must go to the appellant.

G 37. For the reasons stated above specifically that Hans Raj (PW-3) did not specify that the appellant shot him. There is a serious doubt whether it can be held as having been proved beyond reasonable doubt that the appellant attempted to murder Hans Raj for which he has been convicted.

H 38. It is not possible for us to approve the observation of the

High Court that because Suresh Singhal and Pritpal Singhal were armed "it is only the appellant and/or his father late Pritpal Singhal who could be responsible for the firing resulting in the murder of late Kishan Lal and the deceased-Shyam Sunder. A

39. We have already held that the appellant killed the deceased in the exercise of the right of private defence. Pritpal Singhal may or may not have acted out of the desire to protect Suresh. He did not share the same intention as that of Suresh. It is not possible to attribute common intention to kill the three brothers to both the appellant and his father. B

40. Hence, we allow this appeal partly and modify the impugned judgment and order passed by the High Court to the extent that the conviction of the appellant – Suresh Singhal under section 302 IPC for murder of Kishan Lal is set aside and his conviction under section 304 IPC is maintained. Since the appellant has already undergone a sentence of 13 ½ years as on date, we sentence him under section 304 IPC to the period already undergone. The appellant is in jail. He be released forthwith from the custody, if not required in any other case. C D

Devika Gujral Appeal partly allowed.