Chapter 4

JUDICIAL DECISION MAKING IN INDIA IN CRIMINAL CASES USING FORENSIC BALLISTICS

OVERVIEW

In this chapter more than 100 cases has been studied under Ballistic evidence from 1995-2015 (twenty-one years). The cases are broadly categorized as “CRIMINAL CASES IN WHICH BALLISTIC EVIDENCE WAS USED FOR RECORDING CONVICTION OR ACQUITTAL”. The legal provisions has been studied under which the Ballistic evidence has been referred. The cases has been studied in a tabular form to record the number of acquittal and conviction. Findings have been forwarded after the case study for, which are followed by reasons of acquittal and revelations. Under revelation of the rate of conviction and acquittal has been calculated.

The chapter has been broadly categorized under the following topics:

4.1 Introduction

4.2 Legal Provisions Under Which Ballistic Evidence was Used/Referred

4.3 Criminal Cases in which Ballistic Evidence Was Used/Referred For Recording Conviction and Acquittal

4.4 Table of Criminal Cases in which Ballistic Evidence Was Used/Referred For Recording Conviction and Acquittal

4.5 Critical Analysis of the Cases in which Ballistic Evidence was Used to Record Conviction or Acquittal

4.1 INTRODUCTION

Ballistic means the systematic study of the firearms and ammunition used in the commission of crimes for the purpose of investigation and identification. A firearm is a device by which a projectile or projectiles can be hurled with great force. It includes familiar hand weapons like revolver, pistol, rifle and shotgun but also the machine gun
and an extensive variety of military artillery. The latter type of weapon is the concern of Ordinance experts. Moreover, the crimes committed with these weapons are not very common. As already focused earlier in the Introduction Chapter, the science of ballistics has been developed to facilitate the examination of firearms, ammunition and other related matter. Therefore, when a person is shot the wound and the condition of the victim can tell a lot about the nature of the weapon that has been used. Indeed if the weapon is recovered from the scene of crime or from the perpetrators of the crime, the recovery can provide valuable information as to the kind of person who has committed the offence. Even from the bullets or the residue that is left around it, much information can be gathered. Bullets contain a mixture of gunpowder and cordite which leave burn marks on the skin of the victim who is either wounded or killed. They also leave a fine residue on the fingers and hands of the perpetrator of crime. These burn marks can signify the distance from which the shot has been fired, kind of weapon used etc. Each weapon’s barrel also contains small ligatures and grooves, from which when bullet is fired, make marks on the shell casing, which can be used as a means of identifying the make and model of gun if these shell casings are found at the scene. It is to be noted that an automatic-or semi automatic weapon-will expel shell casings as the weapon fires a round whereas a revolver will fire the round but retain the shell casings within the barrel\(^1\). According to an opinion ballistic evidence now share the same footing as the fingerprint evidence\(^2\).

On the basis of the use of different types of firearms in the criminal cases, some classifications of firearms are made hereunder on the basis of several characteristics:

**Shotgun:**

Shotgun falls in the category of shoulder arms. All shotguns are smooth bore firearms, that is, the cross-section of the barrel at any point makes a perfect circle. They are known s shot guns because they fire a single ball, slug or a charge consisting of a considerable number of lead pellets (shots). A shotgun may be single or double barreled. S.B.M.L., D.B.M.L., S.B.B.L., are examples of shotguns.

\(^1\) Ballistics: The Use and Study of Firearms available at: [http://www.exploreforensics.co.uk/ballistics-theuse-and-study-of-firearms.html](http://www.exploreforensics.co.uk/ballistics-theuse-and-study-of-firearms.html) (Last visited on April 22, 2015)

\(^2\) *Supra* note 14 at 406
Rifles:

All rifled arms fire a single bullet. They have a much longer barrel and can fire a high-powered ammunition. Rifles are characterized by their calibers. The caliber is the actual measure of the bore diameter of the barrel between two opposite lands.

Revolver:

A revolver is a rifled handgun, which has a revolving cylinder having chambers for loading the cartridges. The number of chambers may vary from 4 to 7. On pressing the trigger, the cylinder rotates thereby bringing one of the chambers in line with the barrel for firing. Revolvers of different calibers are available. The size of revolvers also vary from 0.38 to 0.455.

Pistol:

A short-barreled rifled arm, which can be fired by one hand are known as pistols. The revolver also is basically a pistol. But because of a revolving cylinder it is known as pistol-revolver. Pistols have a magazine, which is enclosed in its grip. These are available in all calibers from about 5 to 12 mm. The barrel of the rifle in a pistol is known as “Colt Type” and “Smith and Wesson type” with features as discussed herein.

Improvised Firearms:

Nowadays in many cases improvised firearms are often used by criminals in India besides the standard firearms discussed above. They are called by different names and commonly known as ‘country made firearms’. The barrels are often made of pipes meant for water lines and often use standard ammunition. Sometimes, discarded cartridge shells are refilled and used. Each such firearm is unique in itself with respect to mechanisms of firing and general make up. Country made firearm is generally short barreled to facilitate concealment. They are usually smooth barreled and are chambered for different type of cartridges.
Ammunition:

Ammunition means cartridges composed of shells, propellants, primer and projectiles commonly used in firearms. The standard ammunition is made of the following basic components:

i. Cartridge Case/shell/empty
ii. Primer and primer cap
iii. Powder or propellant
iv. Wads
v. Projectiles

4.2 LEGAL PROVISIONS UNDER WHICH BALLISTIC EVIDENCE WAS USED/REFERRED

Ballistics, as a novel technique, has not yet been subjected to the strict judicial scrutiny. There are only few decisions in which ballistics has been properly evaluated. In United States v. Mouzone, and Commonwealth v. Pytou Heang, court only mentioned about the NRC\(^4\) report on Ballistic imaging while considering the reliability of the tool mark identification evidence.\(^5\)

The types of cases that and the legislations in which forensic ballistics played a significant role in solving crimes:

The Indian Penal Code, 1860:

Murder, attempt to murder, criminal conspiracy, voluntarily causing hurt in committing robbery, attempt to commit robbery or dacoity when armed with deadly weapon, acts

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5 V.R. Dinkar, *Scientific Expert Evidence* 194 (Eastern Law House, Calcutta, 1\(^{st}\) edn., 2013) at 275
done by several persons in furtherance of common intention, sedition, unlawful assembly, culpable homicide not amounting to murder, voluntarily causing hurt, theft in dwelling house, dishonest misappropriation of property possessed by deceased person at the time of death, house-trespass after preparation for hurt, assault or wrongful restraint, voluntarily causing hurt and grievous hurt by dangerous weapons and means, rioting, abetment, mischief, criminal intimidation, waging war against the state, conspiracy to wage war against the state, making preparation to commit dacoity, causing disappearance of evidence of offence, or giving false information to screen offender, obstructing public servant in discharge of public functions.

**The Arms Act, 1959:**  Section 25- Punishment for certain offences, Section 27- Punishment for using arms, etc. Section 39- Licence for import, transport and re-export of arms and ammunitions, Section 3- Licence for acquisition and possession of firearms and ammunition, Section 7- Prohibition of acquisition or possession, or of manufacture or sale, of prohibited arms or prohibited ammunition, Section 30- Punishment for contravention of licence or rule.

**The Terrorist and Disruptive Activities (Prevention) Act, 1987:**  Section 3 – Punishment for terrorist acts, Section 5 – Possession of Certain Unauthorized Arms, etc. in specified areas, Section 19- Appeals: Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being an interlocutory order, of a Designated Court to the Supreme Court both on facts and on law.

**The Explosive Substances Act, 1908:**  Section 5 - Punishment for making or possessing explosives under suspicious circumstances

**The Unlawful Activities (Prevention) Act, 1967:**  Section 23- Enhanced penalties.

**The Motor Spirit and High Spirit Diesel (Regulation Of Supply And Distribution And Prevention Of Malpractices) Order, 1998:**  Section 2(m) “Unauthorized exchange” means transfer or receipt of the product from a dealer or consumer to another dealer or consumer or to any other person in contravention of the directives issued by the State Government or Oil Companies;
The Maharashtra Control of Organized Crime Act, 1999: Section 3- Punishment for organized crime

The Prevention of Terrorism Act, 2002: Section 3- Punishment for terrorist acts, Section 4- Possession of certain unauthorized arms, etc.

Ranbir Penal Code, 1989: Section 302- Murder, Section 304 Part I- Culpable homicide not amounting to murder

The Code of Criminal Procedure, 1973: Section 161- Examination of witnesses by police, Section 162- Statements to police not to be signed

Indian Evidence Act, 1872: Section 106- Burden of proving fact especially within knowledge

4.3 CRIMINAL CASES IN WHICH BALLISTIC EVIDENCE WAS USED/REFERRED FOR RECORDING CONVICTION OR ACQUITTAL


a) Background of the case: The Session Judge convicted Accused 1 and 2 under section 302 read with section 34 of IPC for causing murder of T and sections 307/34 for attempting to cause murder of G and R. They were sentenced to imprisonment for life under section 302 of IPC and further sentenced to undergo rigorous imprisonment for seven years for their conviction under section 307 of IPC. The conviction of A1 and A-2 under section 302 was confirmed by the High Court. However the conviction of A-1 and A-2 under section 307 IPC was set aside. Hence A-1 and A-2 preferred this appeal.
b) **Facts of the case:** Existing enmity between the members of the appellant’s family and those of the deceased family resulted in the incident. It was alleged that the brother of accused1 and brother of A-2 were murdered by the deceased T. The prosecution alleged that on the date of occurrence after attending the hearing of the murder case of the brothers of the present accused 1 and 2, T, accompanied by PW1, PW2 and PW8 and also two others boarded a bus for returning to the respective place. When the bus stopped for a while at a stop, a car came from behind and stopped in front of the bus. Then A-2 and A-6 along with their colleagues got down from the car. A-6 were empty handed but the remaining persons were armed with rifles. In the meanwhile a jeep came and stopped in front of the bus. From the jeep A-1 armed with a rifle and his colleagues all armed with guns, alighted. The accused and other co-culprits started proclaiming that as T was inside the bus, he should be cut into pieces. On hearing this the passengers of the bus were struck with terror and started fleeing away. At that time A-1 and A-2 came inside the bus from the front entrance. PW8 in order to hide his identity, had wrapped his face with the chaddar and rushed towards the back door of the bus, when he saw A-1 and A-2 firing indiscriminately at T. In the firing PW5 and PW6 also received injuries. PW8 had by that time managed to get down from the bus like many other passengers and he concealed himself nearby in thick bushes. On knowing T had died, the accused and others raised victory slogans and fled in their car and jeep.

c) **Typology of Forensic Evidence Used in the Case:** All the injuries were caused by shots of firearms which also led to the death of T.

d) **Report Of The Experts Regarding The Case:** The post-mortem examination of T was conducted by PW4 who opined that injuries 1 and 3 referred to above were wounds of entry, while injury 2 was the wound of exit. Death of T had been caused by shock and haemorrhage as a result of firearm injury. The time which elapsed since death was with 12 to 18 hours of the post-mortem examination. All the injuries individually were sufficient to cause death in the ordinary course of nature. Ext. 3 was the report of the post-mortem
examination. The medical examination of PW5 was conducted by Dr. K. Singh. One lacerated wound on the left side of the shoulder was found. The depth could not be probed. The injury was surrounded by charring skin. The X-ray plate showed three shots on the upper left side of back. It was simple in nature caused by a firearm such as a rifle or gun. Age of the injury was within 12 hours. Ext. 2/1 was the medico-legal certificate.

c) **Ground For Accepting The Forensic Evidence:** Although the plea of the appellant’s counsel was that the cartridges recovered were not sent to the ballistic expert nor was any ballistic expert examined, the court in this respect invited a decision of the Supreme Court in *Mohinder Singh v. State* and referred particularly to the observation of the court in this respect. The court opined that the observation which was forwarded in the above mentioned case is applicable where the weapon with which the victim sustained injuries was before the Court and there was doubt whether the injuries could have been caused by using that weapon. Whereas, in this case, the rifles used by A-1 and A-2 were never recovered. So, the prosecution could not, in the circumstances, allege that a particular identifiable weapon was used in committing the crime. In this case there was nothing to be examined by the ballistic expert. Therefore the observations in *Mohinder Singh v. State* should be understood in the above peculiar context. There was no merit in the plea of the appellant’s counsel.

f) **Impact of Forensic Evidence (Conviction):** The conviction of A-1 and A-2 was upheld as there was no merit in the case and the appeal was dismissed⁷.


The appellant was tried for an offence under section 302 in connection with the murder of the deceased. Although empty cartridges were recovered from the spot and pistol and

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⁷ *Prem Kumar And Another v. State of Bihar* (1995) 3 SCC 228
cartridges were seized from the accused but the prosecution failed to send the empty cartridges recovered and the seized pistol to the ballistic expert. Prosecution case based on sole testimony of the brother of the deceased. **The court held that in cases where injuries are caused by firearms, the opinion of the ballistic expert is of a considerable importance where both the firearm and the crime cartridge were recovered during investigation to connect an accused with the crime. Failure to produce the expert opinion before the trial court in such cases affects the creditworthiness of the prosecution case to a great extent.** The court opined that on critical analysis of the materials on the record, it was found that it would not be safe to rely upon sole testimony of PW3, the brother of the deceased and to uphold the conviction of the appellant. Therefore, the conviction and sentence of the trial court could not be sustained and consequently, the appeal was allowed and the appellant was acquitted.8


The accused was convicted for murder under section 302 of IPC. In the instant case, the FSL report categorically stated that it could not be predicted with any scientific accuracy as to time when gun has fired last. Gun belonging to accused had fired at some point of time but that point of time could not with any exactitude, be related to time of incident. It was not uncommon that fire arm barrels was not cleaned after every discharge and may be that gun had fired long before its seizure from accused. There was no evidence as prosecution witness had not supported prosecution case, to show that accused had fired gun. No corroboration was available even from seizure of gun from accused for which he has a valid licence. Even statement made by the deceased in the dying declaration did not corroborate the involvement of the accused in the case.

Therefore conviction was set aside and accused was acquitted of charge. Appeal was allowed.⁹


Appellant was convicted under section 302/34 IPC by the trial court. Hence this appeal. Appellant used vulgar and filthy talk against respondent’s wife. Respondent tried to stop them from using such language. Appellant being aggrieved by respondent’s interference asked one of his companions to shot at him with an intention to kill him and the respondent/husband succumbed to his injuries and autopsy on his dead body was done. Held, appellant asked his companion to shot respondent to see the dire consequence and he was shot down. The seal affixed on the parcel containing empty cartridge was retained and sent to ballistic expert. Appellant had an intention to kill respondent. Blood stained clothes of respondent had also been found. Conviction was upheld and the appeal was dismissed.¹⁰


Sessions Judge convicted accused under sections 302 and under section 27 of Arms Act. Hence this appeal. Held, doctor deposed at trial that since there was blackening of wound described in injury No.1 of deceased, minimum distance between him and assailant would be within 3 ft. and maximum 6 ft. Thus injuries on person of deceased can in no case are believed to have been caused by a single shot fired from a 12 bore single barrel gun from a distance of 40 to 42 ft. The gun which was recovered from the accused and empties which were recovered from the spot were sent for analysis to the ballistic expert. Although it was reported that the gun was in working condition and the cartridge cases lifted from the place were held to have been fired from the gun, but it

was of no use as it did not corroborate the prosecution case. Further evidence of eye witnesses was wholly inconsistent with medical evidence and it was difficult to accept them as eye witnesses to occurrence. There was no motive on the part of the accused to kill deceased and evidence of other witnesses was contradictory to each other. Therefore there was no cogent evidence to support prosecution case. Hence, conviction of appellant was set aside and he was acquitted of all charges framed against him. Appeal was allowed.\textsuperscript{11}


a) **Background of the case:** B, was involved in a prosecution under Terrorist and Disruptive Activities (Prevention) Act, 1987. Though the designated court under TADA had acquitted him of the offences under TADA, he was convicted of sedition under section 124-A of IPC and under section 25 of the Arms Act and was sentenced to imprisonment for life, besides being convicted of certain other lesser offences for which a sentence of rigorous imprisonment for three years was awarded under each count. This appeal had been preferred by the said convicted person under section 19 of the TADA.

b) **Facts of the case:** The appellant was an active member of a militant outfit called A1-Jehad which was formed with the ultimate object of liberating Kashmir from the Indian Union. With this in mind the appellant spread communal hatred among the Muslim youths in the old city of Hyderabad and exhorted them to undergo training in armed militancy and offered them arms and ammunitions. He himself was in possession of lethal weapons like country-made revolver and live cartridges. During the period when a series of bomb blasts occurred in the city of Hyderabad, the police kept a close watch on the activities of the appellant. He was then arrested and after recording his confessional statement the police seized a revolver and two cartridges which were produced by him. After investigation was completed he was challaned

before the Designated Court at Hyderabad for offences under sections 124A, 436, 153-A and 505(2) of IPC and under section 3(3), 4(3) and 5 of the TADA and also under section 25 of the Indian Arms Act.

c) **Typology of Forensic Evidence Used in the Case:** The report of the **ballistic expert** was used to examine the recovered weapon and the cartridges.

d) **Report Of The Experts Regarding The Case:** The ballistic expert (Assistant Director of FSL) conducted scientific test on the articles and reported that the seized articles were in perfect working condition. Particulars of the weapon given in the seizure memo tallied with the weapon on examination by the ballistic expert.

e) **Ground For Accepting The Forensic Evidence:** Allegations of tampering with those articles were not made at any stage of the case neither there was any challenge to the seizure memo and the same tallied with the weapon on examination by the ballistic expert. The identity of the weapon thus stood established beyond any reasonable doubt. Therefore the court was in agreement that the appellant was in possession of arms and ammunitions in violation of law and he was thus liable to be convicted under section 25(1-B)(a) of the Arms Act. The sentence awarded by the trial court (RI for 3 years) in the circumstances of the cases needed no interference.

f) **Impact of Forensic Evidence (Conviction):** The appeal was partly allowed by setting aside the conviction and sentence passes on the appellant for offences under sections 124A, 153-A and 505(2) of IPC. But the **conviction** and sentence passed on him under section 25(1-B)(a) of the Arms Act was confirmed\(^\text{12}\).

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This appeal was filed against conviction for offence punishable under sections **307 and 34 IPC, section 25 of Arms Act, 1959, section 5 of Terrorists and Disruptive Activities (Prevention) Act, 1987**. Prosecution witness stated that appellant brought gun in question after quarrel and fired at him. Witness testified that double barrel gun and empty cartridges seized in his presence by sub-inspector. No material was found in cross-examination to disbelieve testimony of witness. Conviction was based on sole testimony. Seizure of **double barrel gun and cartridges** were proved by the prosecution. Appeal was dismissed and **conviction** was upheld.13


In the present case, the appellant was convicted under section **302 IPC**. It was observed that there was inconsistency in the statement regarding recovery of cartridges from the place where the same was allegedly used in the incident. It was ruled that such minor inconsistency would not discredit the recovery. In the instant case that focused on the common intention under section 34 of IPC, it was ruled that common intention could be developed suddenly, without any second thought. It was not necessary on the part of accused, to act openly to show his or her intention. The case focused on the sufficiency of evidence for convicting an accused under section 302 of IPC. The accused had injured the deceased by gun shot. The injury caused by gunshot was corroborated by recovery of gun and cartridges and also by the report of **ballistic expert** and eyewitnesses. In view of the circumstances, it was ruled that **conviction** was liable to be affirmed on account of gunshot injury on the vital parts of the body.14

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14 Sunil Kumar and Ors. v. State (21.03.1997 – DELHC) MANU/DE/06851997

a) **Background of the case:** The trial judge acquitted the accused who was tried for murder. The Division Bench of the High Court reversed the acquittal and sentenced him to imprisonment for life under section 302 of IPC. The appellant thus became entitled to file this appeal.

b) **Facts of the case:** One armed constable of Special Reserved Police (SRP) shot at his immediate superior (Head Constable) while the latter was perambulating around Khampla Dam site (in Gujrat State) during dusk hours of a cloudy day in July 1983. The victim died on the spot. Some skirmishes developed and the deceased had taken the appellant to task on the ground of dereliction in the discharge of the work allotted to him. The prosecution case was that the appellant was of a truculent temperament and he did not lightly take the diatribe hurled against him by the deceased, he was groping for a suitable opportunity to retaliate. On the evening he noted the appellant walking near the tower of the Dam. He aimed his rifle at the deceased and pumped four bullets into his vital parts which caused his end in a trice.

c) **Typology of Forensic Evidence Used in the Case:** Bullet injuries resulted in the death of the deceased.

d) **Report Of The Experts Regarding The Case:** The post-mortem examination of the dead body revealed, inter alia, one firearm wound on the back of the right shoulder with blackening of the skin and its exit wound was on the left axilla with a big hollow cavity through which lung tissue protruded. Another entry wound on the right scapula, its exit wound on the 5th vertebra with tearing of skin and muscle over an area of 3x3, another entry wound below the left gluteal fold with blackening of the skin and its exit wound was on the upper gluteal fold. There was no dispute that the death of the deceased was due to piercing of bullets from a firearm and that it was a close-range firing.
e) **Ground For Accepting The Forensic Evidence:** In this case the appellant owned the act of firing the rifle but took the plea of section 80 of IPC (General exceptions) and also right of private defence under section 103 of IPC. The court was of the view that primordial requirement of the said exception is that the act which killed the other person should have been done “with proper care and caution”. The very fact that the accused shot his own colleague at a close range without knowing the identity of his target smacks of utter dearth of any care and caution. Moreover, there is a condition for claiming the extended right of private defence only in case the property sought to be protected is a building. It should be a building used for human dwelling or for custody of property. If it is not a building of that type the person exercising the right of private defence cannot go to the farthest extent of killing another person unless the threatened mischief has caused a reasonable apprehension that death or grievous hurt would otherwise be the consequence. In this case there was no plea at all that the appellant had any apprehension of death or grievous hurt nor it was the case that the tower was either used for human dwelling or custody of property.

f) **Impact of Forensic Evidence (Conviction):** In the light of the aforesaid discussion there was no scope to conclude that the appellant had any right of private defence to property. Accordingly, the conviction and sentence was confirmed and the appeal was dismissed\(^\text{15}\).

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MANU/MP/0616/1998

State of Madhya Pradesh filed appeal against judgment of acquittal passed by the Additional Sessions Judge acquitting all respondent accused who were charged under

\(^\text{15}\) *Bhupendrasinh A. Chudasama v. State of Gujrat* (1998) 2 SCC 603
section 302/34 of IPC. Held, it was amply proved that all witnesses claiming to be eye witnesses, were present at the scene of crime. Evidence of eye witnesses was corroborated by medical evidence that there were gun shot wound on body of deceased and medical evidence was in no way contradictory to ocular testimony. Version in FIR was natural and not delayed. The gun and pellets so recovered from the spot and from the body of the deceased were sent to Ballistic Expert, who reported that the gun had been recently fired. It was amply established that accused respondent 1 fired shot at deceased. The motive of the accused was also proved. The conduct of accused resulted in the death of the deceased and amounted to murder under section 302 IPC. It was difficult to accept that five other persons instigated one assailant to fire a shot. Only one shot was fired and it was an abrupt act. Benefit of doubt was extended to other accused other than R-1. Appeal partly allowed against R-1 but failed against other respondents. Only respondent 1(R-1) was convicted.16


The accused fired a shot from his gun, striking on the chest of deceased M. Thereafter, the accused fired another shot and ran away. The accused was arrested and from his possession one DBBL gun along with 3 live cartridges of .12 bore and a licence in his name was recovered. The empty cartridge along with the gun was sent to the ballistic expert who recorded that the empty cartridges had been fired from the gun belonging to the accused. The Sessions Judge convicted the accused under section 302 IPC and section 27 of the Arms Act and sentenced him to life imprisonment. The High Court reversed the said decision and acquitted the accused. The Supreme Court held that it was well settled that any irregularity or even an illegality during investigation ought not to be treated as a ground to reject the prosecution case. Therefore, the judgment of the High Court was set aside and the judgment of the Sessions Judge convicting the accused was restored by the Supreme Court.17


17 Leela Ram (Dead) Through Duli Chand v. State of Haryana And Another (1999) 9 SCC 525

Offence was committed under section 307 IPC and coupled with allied under the Arms Act. Held in instant case, ballistic expert’s evidence and more importantly the medical evidence were the strongest forms of evidence because the oral evidence was often capable of infirmities. First two heads of evidence were before the court and they ran counter to the prosecution case and that was one of the reasons why the court refused to permit any supplementing of the third head by procuring the records and the evidence of the doctor from the hospital. Additional ground for it was because even if evidence was forthcoming, there were too many lacunae and conflicting factors in the prosecution case which would make it impossible to sustain a conviction even with that material. Hence appeal was dismissed and acquittal recorded. Although court accepted ballistic expert’s opinion but it could not depend on it due to the aforesaid reasons.  


The appellant was convicted under section 302/34 of Ranbir Penal Code, 1989 read with section 27 of Arms Act, whereas his co-accused held guilty under sections 302/34/109 RPC. Held, a person can be said to have abetted in doing a thing who instigates any person to do that thing. Although the word is not defined in RPC in simple terms it means incitement, persuasion, provoke or urge. Therefore they cannot be held guilty for the main offence with the aid of section 109 RPC. There is a subtle line of distinction between ‘intention’ and ‘knowledge’. Knowledge may be presumed from intent but not vice versa. There cannot be any hard and fast rule to say that if any vital part is affected, the case must fall within the definition of section 302 RPC only. This depends upon the facts and circumstances of each and every case. Appeal disposed of. In the present case, the expert evidence coupled with an eye

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18 State by Aldur Police v. B. C. Parameshwarappa (07.06.1999) MANU/KA/0359/1999
version account, lead the court to draw an irresistible conclusion that the two shots were actually released from the service gun (AK-47) allotted to accused-Subash Chander, hitting the vehicle driven by V, out of which one after piercing the driver seat hit V from back and proved fatal. Case would fall within the mischief of section 304 Part I RPC only against accused and not one punishable under section 302 RPC, for which he was already convicted by trial court. Therefore conviction under section 302 RPC was set aside and instead he was convicted under section 304 Part-I RPC. Conviction modified and commuted.19

14. Vijay Singh and Ors. v. The State of MP (10.05.1999 – MPHC)
MANU/MP/0270/1999

The appellant was convicted under section 302 IPC and section 27 of the Arms Act. Held court found no infirmity in the dying declaration of deceased that appellant shot him on the instigation of another appellant. The shot was fired at vital part of the body and ultimately resulted in death. The death was the direct result of the gun shot injury. Apparently the accused wanted to cause death. Hence appellants had been rightly convicted. Appeal dismissed.20

MANU/UP/1192/1999

The appellant was convicted under section 302 for murder by firearm. The child witness was trustworthy. Blood-stained kurta of PW2 produced to corroborate his testimony. There was no conflict between ocular testimony and medical evidence. Deceased suffered two gunshot wounds. Report and opinion of the doctor was never challenged. Six pellets were recovered from the dead body. Minute contradiction between medical and ocular evidence do not travel to the root of nature of offence.

20 Vijay Singh and Ors. v. The State of MP (10.05.1999 – MPHC) MANU/MP/0270/1999
Held appellant rightly convicted and sentenced. Appeal was dismissed and the conviction upheld.21


a) Background of the case: The two appeals were directed against the judgment of the Patna High Court dismissing a Criminal Appeal and convicting the appellants under section 302 IPC for murdering one S.

b) Facts of the case: Two accused appellants came on a motorcycle and after taking fuel from the petrol pump they started firing at the deceased. The firing from A hit the chest of the deceased while firing from B hit the leg of the deceased. Further, it was stated that immediately after firing these people left and the deceased while being carried to the hospital was found dead on the way.

c) Typology of Forensic Evidence Used in the Case: The deceased died on account of gunshot injury.

d) Report Of The Experts Regarding The Case: The post-mortem report indicated that the second injury found on the dead body of the deceased was on the umbilical part which would be slightly higher than the thigh. Pistol used in crime was not sent to ballistic expert.

e) Ground For Accepting The Forensic Evidence: The court was of the view that if there would not be any second injury on the dead body of the deceased the matter would have been different. But merely because the position of the injury was slightly different, the trustworthy testimony of oral evidence cannot be discarded on that score nor could it be said that the

medical evidence was contrary to the oral evidence. In the aforesaid premises, having scrutinized the evidence of two eyewitnesses PW1 and PW2 the court found no infirmity with the impugned judgment of the High Court maintaining the conviction of the two appellants under section 302 and sentencing them to imprisonment for life.

f) **Impact of Forensic Evidence (Conviction):** Conviction upheld and the appeals were dismissed\(^{22}\).


Deceased died of gunshot injuries. Although there was discrepancy in medical evidence with regard to nature of injury on the deceased as to whether edges of the wound were averted or inverted the court held that discrepancies were not fatal to the prosecution case when it was not disputed that deceased died of gunshot wounds. While the learned counsel for the appellants were unable to question the correctness of the ballistic expert’s opinion, he stated that there was no evidence to show that the bullet casings sent to the ballistic expert were actually the same casings that were found near the dead bodies. But such question was answered in the evidence of the investigating officer, who in specific terms stated that he found these bullet casings near the body of the deceased and he seized, sealed and sent them to the ballistic expert which statement of the IO was not challenged in the cross-examination. Trial court awarded death sentence and a fine of Rs. 5000 in respect of offence under section 302 IPC. High Court altered death sentence to life imprisonment without awarding any fine or confirming the fine awarded by the trial court. The Supreme Court modified the amount of fine to Rs. 1

\(^{22}\) *Ajay Singh v. State of Bihar (2000) 9 SCC 730*
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Two brothers were murdered by the accused respondents. The death was caused due to gunshot injuries. Conviction and sentence was recorded by the trial court under section 302/34 of IPC and section 25 and 30 of Arms Act, 1959. Failure to send weapon of offence, the gun, to ballistic expert for examination and get his expert opinion would not demolish the creditworthiness of the prosecution case entitling the accused the benefit of acquittal. IO categorically stated that the guns seized were not in working condition and that no purpose would be served by sending the same to the ballistic expert for his opinion. No further question was put to the IO in cross-examination to find out despite the guns being defective, the fire pin was in order or not. Accordingly the appeals were allowed by setting aside the judgment of the High Court and upholding the judgment of the trial court. Conviction sustained.24


Accused was convicted under sections 304(ii), 323 IPC and 25 (1)(a) of Arms Act. Hence this appeal. Death was caused due to pellet injury caused by accused. Careful scrutiny of evidence clearly revealed that witnesses had given cogent, acceptable and convincing depositions. Evidence adduced through doctors and their certificates corroborated ocular evidence. Recovery of weapon used in offence in pursuance of confessional statement of accused. On requisition by the IO the concerned Judicial Magistrate sent all the material objects along with a covering letter to the Assistant Director of Ballistics, Forensic Science Department. The expert after examination of the said items and materials had given a report. Held, accused attempted to cause death

due to sudden provocation caused by a witness, which ultimately resulted in the death of the deceased. Conviction affirmed and appeal dismissed.  


The appellant was convicted for offence committed and punishable under section 307 of IPC and 27 of Arms Act. Prosecution was not able to prove any intention on the part of the accused to kill the complainant or to cause such bodily injury as would cause death in the ordinary course of nature. Report of the FSL also did not link the accused with the commission of the offence under section 307 of IPC. Hence conviction under section 27 of the Arms Act, were upheld as the gun was recovered from the house of the accused and the ballistic expert opined that it was in working condition. Appeal allowed only to a certain extent.


Present appeal was filed against order whereby appellants were convicted under sections 120(B), 147, 148, 149, 302, 307, 397 and 506 IPC and section 25(1-A) of Arms Act. Held considering the entire evidence, identification of A-1 by concerned witnesses who identified assailant was wearing pink colour shirt. Ocular evidence of concerned witness in respect of A-1 was reliable. A-1 was arrested on the same day with injuries on his stomach. Pink coloured shirt was seized. A-1 was also injured in firing. Entire links in chain were complete to hold A-1 guilty of committing murder of deceased persons and causing injuries to concerned witnesses. Pistol was recovered which was examined by the ballistic expert. There was no positive evidence against A-2 who had participated in committing heinous offence. Therefore court gave benefit of

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doubt to A-2. Therefore appeal filed by A-1 was dismissed and his conviction sustained, appeal of A-2 was allowed.\textsuperscript{27}


A-1 wanted to take a particular room fell to the share of informant. A-1 came with his licensed gun to the spot of occurrence with his sons (A-2, A-3 and A-4) who were armed with lathis and they started demolishing the walls. Deceased J and others requested them not to do so. One \textbf{gunshot was fired by A-1 at J} which proved fatal. No contradictions in the evidence of the doctor were found who conducted the post-mortem and the doctor who examined the deceased immediately after he had suffered the injuries. Nothing was found to support High Court’s conclusion that the change in timing indicated in the FIR was subsequently done. High Court incorrectly appreciated the facts and held that since there was only one gunshot, the question of the eyewitness rushing to the spot on hearing the sound appeared incredible as the evidence showed that there were two gunshots out of which one proved fatal. Unreasoned reversal of conviction by High Court was therefore liable to be set aside. \textbf{Conviction} of A-2, A-3 and A-4 under section 440 and of A-1 under section \textbf{302 and 440} as passed by the trial court was upheld.\textsuperscript{28}


The accused fired at PW26 with the pistol which missed PW26. Then the accused fired three times which caused a gunshot injury on N, who later succumbed to the gunshot injury. The respondent was arrested and on an alleged disclosure statement made by him 1 .22-bore pistol was recovered from the house of one C and the same was seized. During the course of investigation certain empty cartridges had been seized from the spot of the incident and the pistol then recovered at the instance of the respondent herein was sent for ballistic examination, who opined that the empty cartridges found at


\textsuperscript{28} \textit{Ramakant Rai v. Madan Rai And Others (2003) 12 SCC 395}
the place of incident could have been fired by the pistol recovered at the instance of the respondent. The respondent was convicted under sections 302, 457, 380 of IPC by the Additional Sessions Judge but on appeal was acquitted by the High Court. The Supreme Court was in agreement with the finding of the High Court that it was not safe to place reliance on the report of the ballistic expert because it was an admitted fact that the empties which were sent to the ballistic expert after six months were not sealed at the time of seizure. Therefore the identity of the empties seized from the place of incident and those tested by the expert could not be safely tallied. Moreover, the recovery in fact could not be said to be from a place to which the respondent alone had the exclusive access. The possibility of the said weapon being with said C, could not be ruled out. Therefore the appeal of the State was dismissed and the acquittal recorded by the High Court was upheld.29


a) Background of the case: The trial court convicted the respondent under section 302 of IPC and sentenced him to undergo imprisonment for life. He was further convicted under section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for a period of two years. The sentences were to run concurrently. Against the judgment of the trial court the respondent filed an appeal in the High Court of Punjab and Haryana against his convictions which has been allowed and he had been acquitted of all the charges. Hence the State had preferred the present appeal.

b) Facts of the case: On 15.09.1991, at about 10.00 p.m. when JS and KS were in their houses, the accused persons came in front of the house of KS in the street and started abusing him whereupon the two brothers of KS came out and asked the accused persons as to why they were abusing KS. The respondent MS was armed with a single-barrelled 12 bore licensed gun belonging to his father AS. The other accused persons exorted MS to fire whereupon he fired which hit KS as a result of which he fell down. The dispute arose regarding a land as the

land of KS the deceased and the accused were adjacent to each other and on the morning of the incident there was an altercation between the two parties.

c) **Typology of Forensic Evidence Used in the Case: Firearm injuries** were caused which resulted in the death of the deceased.

d) **Report Of The Experts Regarding The Case:** According to the doctors injuries were caused by a firearm and injuries on the neck and head were individually sufficient to cause death in the ordinary course of nature. In the opinion of the doctor, death was caused within twenty-four hours of the holding of the post-mortem examination.

e) **Ground For Accepting The Forensic Evidence:** The Supreme Court was of the opinion that minor contradictions or inconsistencies are immaterial. Non-mention in seizure memo whether the cartridges seized by investigating officer from place of occurrence were wet or dry though it was raining at that time or non-mention in inquest report that dead body was covered with a cloth though PW had stated so, were minor omissions and cannot be a ground for discarding the prosecution case.

f) **Impact of Forensic Evidence (Conviction):** The appeal was allowed by setting aside the impugned judgment of acquittal of the respondent rendered by the High Court and the trial court judgment was restored. Bail bonds of the respondent were cancelled and he was directed to be taken in custody forthwith for serving out the remaining period of sentence\(^\text{30}\).


The appellant fired on the deceased. Bullet hit the left eye of the deceased which lead to his death. Defence version regarding attack by the prosecution party was not established. Failure to send bullet for ballistic examination, on facts held was not fatal. The well reasoned judgment of the trial court and High Court **convicting** the accused under section **302** was upheld and the appeal of the appellant Surendra Paswan was dismissed.31


a) **Background of the case:** The sole respondent accused was convicted by the learned Additional Sessions Judge for an offence under section **302 IPC** and sentenced to rigorous imprisonment for life and to pay a fine of Rs. 5000. Aggrieved thereby, the respondent accused preferred an appeal before the High Court, which was allowed by the impugned judgment and the sentence and conviction recorded by the trial court was set aside. Hence this appeal had been filed by the State.

b) **Facts of the case:** A altercation started regarding land regarding which a civil suit was pending between the accused and PW5 where the deceased intervened and advised both of them not to quarrel and wait for the decision of the court. Thereupon the accused became furious and threatened the deceased of dire consequences. Later on the same day, when the deceased was passing through the passage in front of the house of the accused along with his brother PW1 and PW3, the accused with DBML (double barrel muzzle loaded) gun in his hand challenged the deceased stating that he would be done to death and then fired at him. The deceased received injuries on his arm, chest and shoulders fell down and became unconscious. Thereafter the accused ran away. Later the deceased died. Later a DBML gun was recovered.

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c) **Typology of Forensic Evidence Used in the Case: Ballistic** examination was conducted. The post-mortem report revealed that all the injuries were sustained by a firearm.

d) **Report Of The Experts Regarding The Case:** The ballistic expert prepared a report regarding the type of firing weapon that was used by the accused. PW2 the doctor opined that the injuries were ante mortem having being sustained by a firearm like gun and such injuries were sufficient in the ordinary course of nature to cause death.

e) **Ground For Accepting The Forensic Evidence:** The High court did not accept the ballistic report as the DBML gun (Ext. P-11) alleged to have been used in the commission of the offence was not used in the test fire at the time of local inspection conducted by the trial court and instead a test fire was carried out with the help of SBML (single barrel muzzle loaded) gun belonging to PW1. The High Court held that this had materially affected the prosecution story. According to the opinion of the Supreme Court this finding of the High Court was not only fallacious but also perverse. While, it is true that generally the firing range of gun differs from gun to gun, the opinion of the High Court that the firing range of the two different guns are different was based on no expert opinion and the same was based on conjectures and surmises. In the instant case, both the guns were of the same category except that the one used in the commission of crime was double barreled and the one used during the test fire was single barreled. Therefore, the court opined that it could not be said that the firing range from DBML gun differed from SBML gun or vice versa. Secondly, the High Court had thrown out the prosecution story on the report of the ballistic expert. The report of the ballistic expert was signed by one Junior Scientific Officer which was objected by the High Court as such Junior Officer is not enumerated under sub-section (4) of section 293 of CrPC, therefore the court held that in absence of his examination such report cannot be read in evidence. This reason of the High Court was also not supported by the Supreme Court as the FSL report had been submitted under the signatures of a Junior
Scientific Officer (Ballistics) of the CFSL. There was no dispute that the report was submitted under the hand of Government Scientific Expert which was supported by section 293(1). Thirdly the High Court questioned the prosecution story as the two pellets that were recovered from the body of the deceased were not sent for examination to the ballistic expert. The Supreme Court also did not support this view as it is not the requirement of law that the pellets recovered from the body be sent to a ballistic expert to determine as to whether the pellets were fired from the exhibited gun or not. The court held on the contrary, the recovery of pellets from the body of the deceased clearly established the prosecution case that the deceased died of gunshot injuries. Moreover, the court was of the view that the ocular testimony corroborated by the opinion of the doctor proved the prosecution case beyond reasonable doubt.

f) Impact of Forensic Evidence (Conviction): The appeal of the trial court was restored and the appeal of the State was allowed. The bail bond was cancelled and it was directed to take back the accused in custody forthwith.


Present confirmation application under section 366 of CrPC filed for confirmation of capital sentence passed by trial court for offence under sections 302 and 307 of IPC whereas appellant accused filed appeal against order of conviction under section 302 and 307 of IPC. Held, from evidence it is not transpired that accused S had knowledge that accused M will be brought in court and accused S had planned murder and that it was pre meditated action. Evidence clearly indicated that presence of accused was established and it was also admitted by defence and as transpired from evidence, it was accused who had fired on M. On close scrutiny of evidence, it transpired that it was accused who had fired shot from his rifle. At the same time it was difficult to accept, prosecution case that accused can be held responsible for murder of advocate in view of evidence brought by prosecution and it was further found from evidence that bullet had also hit on wall, where wall was also damaged and there was every possibility that

bullet might have after hitting wall had broken and unfortunately that part of bullet had hit and entered the body of advocate. In view of evidence of Ballistic expert coupled with medical evidence, accused was responsible for murder of deceased M. Accused also knew that by using such firearm in place where Court premises is situated; there was every possibility of hitting bullet on any person. In present case motive could not be established by the prosecution. In view of the above, it was not rarest of rare case and capital punishment imposed by trial judges was not proper. No one was expecting the firing would take lives of two person and cause grievous hurt to another person. Considering the age and as the accused had no criminal history and in light of the background this was not a rarest of rare case, the death sentence imposed on the accused was commuted to life imprisonment. Thus appeal filed by convict accused was partly allowed. **Sentence commuted.**


1) **Background of the case:** This appeal was preferred against the dismissal of the appeals by the High Court, affirming the judgment and order passed against the appellants by the trial court whereby, Appellant-1 had been sentenced to undergo rigorous imprisonment for life under section 302 and 5 years rigorous imprisonment under section 27 of the Arms Act. Appellants 2 to 5 had also been sentenced to undergo rigorous imprisonment for life under section 302/149 IPC. Appellants G and U had also been sentenced to undergo 5 years rigorous imprisonment under section 27 of the Arms Act.

b) **Facts of the case:** The case of the prosecution was that the deceased B was carrying a bundle of pea crop on his head came near the canal from his field when the appellants came near the bridge on a tractor trolley and fired at him. The first shot was fired by appellant B from his rifle causing injury on the chin of the deceased. After being injured he fell down where after the other appellants fired indiscriminately from their respective weapons and went towards their village in a tractor trolley.

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c) Typology of Forensic Evidence Used in the Case: The injuries were caused by firearm.

d) Report Of The Experts Regarding The Case: PW2, the doctor conducted the post-mortem examination on the body and the injuries. On dissection of thorax and abdomen, the thoracic abdominal cavity was found full of blood and blood clots and three big pea-size pellets were recovered from front of the sternum and big pea-size pellets recovered from right iliac fossa. There was damage by pellets to both middle lobes of lungs and right chamber of heart and right lobe of liver. The injuries were ante-mortem caused by firearm. Time of death was within 24 hours of post-mortem examination and the cause of death was due to damage to vital organs i.e. lungs, heart, liver and brain. From the description of the wounds given by the doctor, it appeared that the firing was done from very close range.

e) Ground For Accepting The Forensic Evidence: Although the learned counsel for the appellant contended that no pellets were recovered from the place of occurrence although several shots were fired and that it was the case of the prosecution that no pellets were found the court was of the view that only for this reason alone the case of the prosecution cannot be disregarded. If pellets were found at the place of occurrence it would have further strengthened the case, but in the absence of such evidence one has to rely upon the ocular evidence which if found reliable may be acted upon. In the present case the court found the eyewitnesses to be straightforward and reliable. Being rustic villagers there was no effort on their part to improve the case of the prosecution on the basis of imaginary facts. They had deposed in a straightforward manner, and there was a ring of truth in their testimony. The court found them to be implicitly reliable. Moreover there was no inconsistency between the ocular evidence and medical evidence on record.

f) Impact of Forensic Evidence (Conviction): As both the courts below had relied upon the evidence of the eyewitnesses according to the court there was no
reason to take a different view. Therefore, the court found no merit in the appeal and dismissed it\textsuperscript{34}.


Prosecution case was that out of four accused, three were armed with country-made pistols and one of them, R, exhorted another, N, to fire at the deceased. Accordingly, N fired at the deceased causing his death. R did not fire at anyone. Held, if all the four accused had come determined to kill the deceased and three of them were armed with country-made pistols, there was no need for R to exhort his companion. Bullet injury sustained by the deceased according to medical report. Forensic expert was not examined by prosecution to prove that injury was caused by a bullet or that bullet could have been fired from any of the weapons carried by the accused persons. Held, fact that the bullet was found embedded in the vertebra was by itself conclusive of the fact that deceased had suffered a firearm injury. Question whether the said bullet was discharged from any of the weapons carried by the accused was of no significance since the weapons allegedly carried by the accused were neither recovered nor seized. There was, therefore no material on the basis of which the ballistic expert could have given his opinion as to whether the bullet had been discharged from the weapons carried by the accused. Hence, benefit of doubt was given to appellant/accused R and he was acquitted but the conviction of appellant N under section 302 IPC and section 27 of Arms Act, was upheld as the courts below have not erred in convicting the appellant N under the said sections.\textsuperscript{35}

\textsuperscript{34} Birendra Pal v. State of Bihar (2005) 9 SCC 719

\textsuperscript{35} Nirmal Singh & Another v. State of Bihar (2005) 9 SCC 725

Additional Sessions Judge convicted all accused/appellants for offence of murder under sections 302/34 and 100 IPC. On scanning the entire evidence, oral as well as documentary, placing heavy reliance on the statements of the witnesses banking on the corroborative medical and ballistic report and pinning faith on the seizure of the incriminating articles, the learned Additional Session Judge convicted all the accused persons. Hence this appeal. Held, consorted efforts of appellants did not come within purview of section 100 IPC. However, statements of eyewitnesses was that injured deceased desperately tried to wrench himself free from clutches of appellants, although they tried to pin him down was on record. In pursuance of the statement of one of the accused, cartridges could be recovered. Fired cartridges were also seized near a Jeep. Those articles were seized in presence of the witnesses. Steps were taken to collect the Inquest Report, Medical Report and Ballistics Report. Ultimately on completion of investigation, charge sheet was submitted. Story projected by appellants for their defence was not believable. Thus, non-explanation of injuries by prosecution could not weaken strong prosecution case. Therefore order of conviction against all appellants was affirmed and their appeals were dismissed.36


The deceased was shot by the accused. Post-mortem examination was conducted by a team of doctors, who opined that the death was due to bullet injuries. The ballistic expert reported that the pellets extricated from the body of the deceased must have been fired from the pistol recovered at the instance of the accused. The Supreme Court was of the opinion that convincing reasons were given by the ballistic expert in support of his opinion about identifiable marks appearing on pellet. Held, evidence of the ballistic expert supported the prosecution case fully. The acquittal of the accused Paltan Mallah was reversed by the Supreme Court as the report of the ballistic expert was not

appreciated in the correct perspective by the High Court. Hence, was convicted under section 302 and sentenced to imprisonment for life by the Supreme Court.37

MANU/SI/0003/2005

This appeal was filed by the State of Sikkim, against the judgment of acquittal of the accused who were charged under section 302/201/34 IPC. Held, circumstances proved by direct evidence coupled with the failure of the accused to give reasonable explanation of the inculpatory circumstances completed the chain of circumstances. The ballistic expert examined the gun and found it was a hand gun and was a firearm being a regular .380” caliber revolver and was in normal working condition and it was capable of chambering and firing .380” caliber regular cartridge. Evidence taken together with other proved circumstances on record was sufficient to substantiate that the accused knowingly committed the offence and concealed the weapon. Accused found guilty of offence of murder under section 302 IPC and the co-accused found guilty of offence of causing disappearance of evidence under section 201 IPC. Conviction given.38

33. Abdul Majid v. State (Govt. of NCT) (30.08.2006 – DELHC)
MANU/DE/4020/2006

The accused was convicted under section 307 IPC. Convict attacked the victim with a Fire-arm (Katta) causing injury on his head. An empty cartridge was recovered from the spot, sealed in separate parcels and sent to ballistic expert. On the pointing of the accused the Katta of .315 bore was also recovered, which was also seized, and converted into a parcel and sent to the FSL along with the recovered empty cartridge. Thereafter, the report of the Ballistic Expert was collected. Testimony of victim

corroborated by other witness and medical evidence. Conviction affirmed but sentence reduced to seven years.\textsuperscript{39}


a) \textbf{Background of the case:} The appellants filed this appeal questioning the judgment and order passed in criminal appeal whereby and whereunder their conviction and sentence under section 302 read with section 149 of IPC and other provisions had been upheld by the High Court. The appellants were subjected to rigorous imprisonment for life for committing murder of H and wife of HS along with other sentences.

b) \textbf{Facts of the case:} The incident occurred due to long standing land dispute and enmity between both the parties. RS on the fateful day came to the village. On receipt of the said information the accused persons said to have formed an unlawful assembly and armed with various lethal arms, came to the place of occurrence. They were seen by BS (PW3) to whom exhortation was given by R, an accused and he was chased. Shots were fired resulting in sustenance of injuries by him on his right arm. One HS informed the deceased, H, the uncle of PW3 that the accused were coming towards their house armed with firearms. J, an accused allegedly thrown a hand grenade at H. He fell down whereafter other two accused fired shots at him. HS ran and entered the house of his uncle and took the rifle of RS and fired towards the accused persons from the upper storey of the house of RS. In the meantime, wife of HS started firing from the gun of HS. At this, the accused persons made indiscriminate firing at her, due to which she received injuries and died. The gun which was used by Smt. Ram Shree was taken away by the accused persons. The investigating officer had also recovered a large number of cartridges from the place of occurrence. The gun used by Smt. Ram Shree was also found missing.

\textsuperscript{39} Abdul Majid v. State (Govt. of NCT) (30.08.2006 – DELHC) MANU/DE/4020/2006
c) **Typology of Forensic Evidence Used in the Case:** The death of two persons were caused due to firearm injuries. Gunshot injuries were also caused to other persons.

d) **Report Of The Experts Regarding The Case:** Medical evidence, supported the prosecution case. Injuries found on the persons of the deceased and also the injured persons categorically pointed out that they had been caused by firearms.

e) **Ground For Accepting The Forensic Evidence:** The court was of the view that the accused persons came heavily armed. They were seen by PW3. He was not only chased, a shot was fired at him resulting in his sustenance of an injury on his right arm. He still ran and informed others. Before others could conceal themselves, the appellants reached the spot and started firing. H was done to death from a shot fired from close range. The autopsy surgeon did not say what would be the distance from which shot was fired. It would depend upon the nature of the weapon used. The distance in case of a pistol may be 2 ft, whereas in case of a shotgun, it may be 3 ft. But, undoubtedly the injury resulted from a shot fired from a short distance. In this regard the court consulted “Modi’s Modis Medical Jurisprudence and Toxicology, 23rd Edn., “Major Sir Burrad’s The Identification of Firearms and Forensic Ballistics” and “Russel A. Gregory’s Identification of Disputed Documents, Fingerprints and Ballistics, 3rd Edn.”.

f) **Impact of Forensic Evidence (Conviction):** The Supreme court upheld the conviction of the High Court as there was no merit in the appeal and thus the appeal was dismissed.\(^{40}\)

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a) **Background of the case:** This appeal by special leave was directed against the judgment and order of the High Court whereby the High Court upheld the conviction and sentence passed by the trial court against the appellant herein who was found guilty of the offence punishable under sections **302 and 307 of IPC and section 27 of the Arms Act.** The appellant was sentenced to undergo life imprisonment and to pay a fine of Rs. 1000 for the offence punishable under section 302, to undergo seven years imprisonment and a fine of Rs. 500 for the offence punishable under section 307 and for the offence punishable under section 27 of the Arms Act to undergo, one year’s rigorous imprisonment.

b) **Facts of the case:** The appellant shot at his father and brothers as a result of which one of the brothers RD succumbed to his injuries while his father AS (PW2) received serious gunshot injuries. The appellant pleaded a right of private defence which had been disbelieved by both the courts below. The incident took place due to an altercation between the father AS and the appellant son on the attempted repair of the earthwork by the father. The altercation attracted the other brothers of the appellant came rushing to prevent any serious injury to their father. On seeing the other members coming towards him the appellant released his father and picked up a .12 bore licensed single barrel gun and fired a shot from the window of the room. The shot fired by him hit RS, the deceased on his right chest and arm and some of the pellets caused injuries to the right arm of his father AS.

c) **Typology of Forensic Evidence Used in the Case:** This is a case of gunshot injuries received by the victims RS and AS(PW2) where RS succumbed to the injuries.

d) **Report Of The Experts Regarding The Case:** The medical evidence on record also established beyond doubt that the deceased as well as PW2 received
the gunshot injuries. Later it was also confirmed that the cartridge had been fired from the licensed gun of the appellant.

e) **Ground For Accepting The Forensic Evidence:** Plea of self-defence taken by the appellant were not accepted by the court. Moreover appellant was found to have not received any injury even though he was arrested on the very next day of the occurrence. On the other hand eyewitness account of appellant’s father and brother and also medical evidence supported the prosecution case.

f) **Impact of Forensic Evidence (Conviction):** Having regard to all the facts and circumstances of the case, the court was satisfied that the courts below had not committed any error in **convicting** the appellant of the offences punishable under sections 302, 307 of IPC and section 27 of the Arms Act. Since the court did not find any merit in the appeal, the same was accordingly dismissed\(^\text{\(41\)}\).


a) **Background of the case:** The appeal was filed against the judgment of the conviction and sentence under section 302 IPC passed by the trial court against the appellant and upheld by the High Court.

b) **Facts of the case:** The deceased S was addicted to drink. On the fateful day, PW1 while standing in his kalam had seen the appellant and one R (PW7) and the deceased were going together. At about 4.30 PM on the same day, he came to know that the body of the deceased was lying near a tea stall belonging to one RL. PW1 and 2 went there and found S dead. PW1 lodged an FIR. Autopsy of the dead body was conducted by PW11. The appellant thereafter made a confession which led to the recovery of an air gun on interrogation.

c) **Typology of Forensic Evidence Used in the Case: Ballistics** was used to examine the recovered air gun. Autopsy of the deceased also revealed that the injury must have been caused by an **air gun**.

d) **Report Of The Experts Regarding The Case:** PW11, the doctor who conducted autopsy found a circular penetrating wound 1/2 medial to the right nipple. He opined that the injury might have been caused by a air gun like MOI. He further found that the injury was due to profuse haemorrhage and shock due to penetrating injury. The recovered gun was sent to the FSL and was examined by PW9. It was found to be in working condition. PW9 opined that it was a 0.22/5.5 mm caliber rifle. On test firing it was found to be in working condition. The muzzle velocity of the pellet from the above air rifle was about 400 feet per second. As per TSR 991 annexed to Schedule II under the Arms Rules, 1962, the air rifle was found to satisfy the test specified therein i.e the pellets did not penetrate 1” thick dead wood plank at the range of five feet. If a human body was shot by this kind of air rifle in a close range, there was every chance to occur death.”

e) **Ground For Accepting The Forensic Evidence:** The court relied on the statement made by PW11 that the foreign body seen through x-ray in the body of the deceased could not be recovered despite the great effort made in this regard during post-mortem. He noticed that the penetrating injury was in a vital organ of the chest part. From the statement of PW11, the court was of the opinion that non-recovery of the pellets from the body of the deceased during post-mortem examination was not very material so as to discredit the entire prosecution case. He court also opined that the ownership of the air gun was not necessary to be proved as the recovery of the said gun was made at the instance of the accused in terms of section 27 of IPC. When the possession of the air gun and recovery thereof had been proved, according to the court ownership took a back seat.
f) **Impact of Forensic Evidence (Conviction):** The court was satisfied that the cumulative effect satisfied the test of proof of the guilt of the appellant on the basis of the circumstantial evidence for the commission of the offence under section **304 Part II** of the Penal Code. Since the appeal was devoid of any merit it was dismissed.42


The appellant was convicted under section **302 IPC.** Deceased was stabbed and was also shot from close range on her head. Witnesses were unable to depose about the motive of the appellant regarding the assault. Merely because three witnesses stated that deceased was afraid of her relatives and neighbours, could not lead to the inference that the appellant who was nephew of the brother-in-law of the deceased would benefit from her death nor was nursing any grudge against the deceased. IO did not talk of any secret information or other information which he had received identifying co-accused as the assailants. There was no explanation from the IO that as to why he waited several days to effect recoveries. Ballistic expert was also examined to prove the FSL report. Sample of hair was collected from the accused persons, namely it was found non-matching with the hair of the assailants recovered from the spot. Co-accused persons were acquitted by the Trial Court. Conviction of the appellant was also set aside. Appeal was allowed and **acquittal** recorded.43

38. Santosh Kumar Srivastava and Ors. v. State (22.05.2007 – ALLHC) (MANU/UP/2218/2007)

The appellant was convicted under section **302/34 of IPC.** Held FIR was nor antetimed. Site plan fully supported prosecution case. Witnesses gave cogent reasons for

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42 Sivakumar v State (2006) 1 SCC 714  Pg 716 para 3 & 4 Pg 719 para 18 & 19 Pg720 para 21 Pg 725 para 48
their presence on spot at time of incident. **Oral testimony fully supported by medical evidence and ballistic report.** The ballistic expert had conducted experiments on two targets to find out the result of hard and loose contact firing. Motive was also fully established. It was a planned murder in broad day light. Prosecution fully proved its case beyond reasonable doubt. There was no merit in the appeal. **Conviction upheld.**


a) **Background of the case:** The present appellant had been convicted by both the trial court and the High Court. Hence the appeal has been preferred to the Supreme Court under sections 302/149 and sentenced to imprisonment for life and a fine of Rs. 5000.

b) **Facts of the case:** Three persons were killed as a result of firing. R, S and other three along with the car driver were returning from a certain place. As a car reached a certain distance the accused U, A, P, D, M, R, P and two other persons all armed with modern weapons started firing at the car. The firing led to the death of S and two others at the spot. R and P who were sitting on the rear sit rushed out of the car to save themselves and they too received injuries in the process. On the inspection of the site, several things were recovered including some fired cartridges, a rifle and a 9mm pistol licensed to deceased deceased S were recovered. The bodies were also sent for post-mortem examinations.

c) **Typology of Forensic Evidence Used in the Case:** This is a case of firearm injury.

d) **Report Of The Experts Regarding The Case:** The experts opined that the shots were fired from .12 bore shotguns, 9 mm pistols and carbines. PW 8, the doctor stated that the shots had been fired from a distance of a foot or two.

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44 Santosh Kumar Srivastava and Ors. v. State (22.05.2007 – ALLHC) MANU/UP/2218/2007
e) **Ground For Accepting The Forensic Evidence:** The court relied firmly on the medical evidence and emphasized that there appeared to be no injuries from the rifle or pistol. The court reiterated that the shots had been fired from a distance of a feet or two and the opinion was fortified as the entry wounds without exception show signs of charring and tattooing. The dimensions of the entry wound also showed several different types of weapons had been used. It was clear from the post-mortem examination of the deceased Devi Shankar Dubey’s body that a shotgun had undoubtedly used in his murder and that the shot had entered en masse as was apparent from the size of wound of entry or injury. The court also relied on the report of the post mortem of other two deceased and fortified its views from Pg. 465 of the 4th Edition of Dr. B.R. Sharma’s book “Forensic Science in Criminal Investigations and Trials”. The Court also consulted Modis’s Medical Jurisprudence and Toxicology Book 23rd Edition pgs 722 and 723.

**Impact of Forensic Evidence (Conviction):** The appeal was thus dismissed on the consideration of all the evidence produced before the court.45

**40. State of Haryana v. Suraj Mal & Ors. (22.05.2007 – PHHC)**

MANU/PH/0474/2007

The trial court acquitted the respondents from charges under sections 302, 34, 325 IPC and section 27 of Arms Act. Hence present appeal by State. Held version given by concerned eye witness had been fully corroborated by independent witness. Medical evidence also corroborated same version. From evidence on record, case of prosecution was fully established. The disclosure statement recorded lead to recovery of .12 bore DBBL gun. According to the report of the Ballistic Expert, he was not able to give opinion regarding linkage of crime cartridges in respect of gun on account of

tampering with of the fire arm as fire pins of .12 bore DBBL gun had been cut and tampered with. Therefore all reasoning of the trial court were perverse and not sustainable. R-2 and R-3 were entitled to benefit of doubt as they had no common intention with respondent No. 1 in causing death of deceased. R-4 Nd R-5 were liable for causing injuries to witnesses. Therefore R-1 was liable to conviction for offence punishable under section 302 IPC. R-4 and R-5 deserved conviction under section 34 and 325 of IPC. R-2 and R-3 were acquitted on ground of benefit of doubt. Appeal allowed and disposed of accordingly. Therefore R-1 was convicted.46


a) **Background of the case:** The appellants were convicted for commission of offences under sections 302/149, 323/149 and 148 of IPC for committing murder of Jharmal (JH) and Juhru (J) and also causing hurt to Mubin (M). They were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 1000 for commission of the offence under sections 302/149 IPC and also other sentences for commission of the offences under other sections.

b) **Facts of the case:** According to the FIR, when the deceased and the injured were thrashing bajra, they were attacked by 12 persons. It was alleged that two of the accused were carrying .12 bore guns and the rest of the accused were having lathis. On exhortation given by MI ordering to shoot down JH and his two brother accused S ang G allegedly fired shots from their guns. The informant ran away from the said place and climbed on a nearby hill. He cried for help. The deceased duo also cried for help. They ran towards a well situated nearby. The accused killed JH and J by hitting them on their heads with lathis and tachia. M was also assaulted on his head and other parts of the body. Presuming all the three brothers to be dead the accused ran away. Allegedly the wooden portion of the gun of Sahid fell down at the place of occurrence. The

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motive for commission of the said offence was said to be that Majid had some dispute in respect of a house with Jharmal.

c) **Typology of Forensic Evidence Used in the Case: Gunshot injuries** were the cause of two persons death and the sufferance by M.

d) **Report Of The Experts Regarding The Case:** Autopsy on the body of JH and J was conducted by the doctor who examined himself as PW5. Two gunshot injuries were suffered by Jharmal. Both the deceased had suffered incised and lacerated wounds. The injury report marked as Ext. P13 in relation to M (PW1) revealed that he suffered as many as 13 injuries. Injury 13 was a lacerated wound, being 2.5cm x 1/2cm over middle of scalp.

e) **Ground For Accepting The Forensic Evidence:** Oral testimonies of the eyewitnesses got corroborated by the medical evidence. Homicidal death of JH and J and injuries suffered by M were also not in dispute. There was no discrepancy between the ocular evidence and medical evidence had been brought to the notice of the Hon’ble Court. Although the attention of the court had been drawn to the fact that that the first informant did not disclose in FIR that PW1 was lying unconscious but it was then well settled that FIR need not be encyclopaedic. It was a fact. It was found to be correct. Moreover the court did not find any force in the submission of the learned counsel of the appellants that the weapons of offences were not recovered. The court was of the view that in any event non-recovery of the incriminating materials from the accused cannot be a ground to exonerate the accused of the charges when the eyewitnesses examined by the prosecution were found to be trustworthy.

f) **Impact of Forensic Evidence (Conviction):** The court upheld the **conviction** of Umar Mohammad and Others and dismissed Criminal Appeal Nos. 382-386 of 2004\(^{47}\).

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\(^{47}\) *Umar Mohammad & Ors v. State of Rajasthan* (2007) 14 SCC 711

a) **Background of the case:** This appeal have been preferred to the in the upreme Court against the Judgment of the High Court whereunder the appeal filed by the State of UP had been allowed and the appellant had been convicted under section 302 of IPC for causing murder of Smt, Premwati. He had been sentenced to suffer imprisonment for life by the High Court.

b) **Facts of the case:** An Altercation took place over cable connection resulting in the appellant fetching his father’s revolver and firing indiscriminately at complainant’s house from door of his house, resulting in death of the deceased, who was hit by a bullet in the jaw while she was attempting to close the main door of their house. Some bullets also hit the door of the house of the deceased. During investigation bullets were recovered from the spot. The husband of the deceased (PW1) brought her to the hospital and there after lodged an FIR. The victim died after a few days from the date of the incident.

c) **Typology of Forensic Evidence Used in the Case:** Firearm injury was caused to the victim. **Ballistics** was also used to determine the weapon which was used for firing the bullets.

d) **Report Of The Experts Regarding The Case:** The victim was examined by PW4. The doctor found two types of injuries on the person of the victim. He opined both the injuries were found to be fresh. Injury 1 was alleged to have been caused by firearm bur final opinion was reserved to be given after the x-ray. Injury 2 was caused by a blunt object. On x-ray being taken, a radio opaque elongated shadow was found in thoracic spine in dorsal region over T 5-6. The victim remained under the treatment of PW5. PW5, also testified that the deceased had suffered paralysis in both her legs due to bullet injury sustained in the spinal cord. After her death an autopsy was conducted by PW7. The doctor
opined that the ante-mortem injuries that were found on the body were mainly deep bedsores on various parts of the body and one healed scar, size 1.2 cm x .5 cut, on the left face at the chin 2.5 cm away from medium plank thoracic spine. On internal examination, the doctor recovered a metallic bullet from her spinal cord, which had caused extensive damage in thoracic spine and paralysis in half of the body. The cause of death was opined to be septicaemia and toxaemia due to bedsores.

e) **Ground For Accepting The Forensic Evidence:** Although the learned Senior counsel appearing on behalf of the appellant assailed the conviction of the appellant mainly on the ground that apart from the fact that the ballistic report casts a serious doubt that the distorted bullet allegedly recovered from the spot came out of the seized revolver, it was also obligatory on the part of the prosecution to send the bullet, allegedly recovered from the body of the deceased, for being examined by the ballistic expert, so as to connect the recovered licensed revolver of the appellant’s father with the crime, the Supreme Court did not support this view of the learned counsel. The court held it cannot be laid down as a general proposition that in every case where a firearm is allegedly used by an accused person, the prosecution must lead the evidence of a ballistic expert to prove the charge, irrespective of the quality of the direct evidence available on record. Further it was held that where direct evidence is of such an unimpeachable character, and the nature of injuries, disclosed by post-mortem notes is consistent with the direct evidence, the examination of ballistic expert may not be regarded as essential. However, where direct evidence is not available or that there is some doubt as to whether the injuries could or could not have been caused by a particular weapon, examination of an expert would be desirable to cure an apparent inconsistency or for the purpose of corroboration of oral evidence. In what cases examination of a ballistic expert is essential for the proof of the prosecution case, must depend upon the facts and circumstances of each case. In the instant case, having regard to the ocular evidence adduced by the prosecution, there was
no reason to discard the prosecution theory that the injury as a result whereof the deceased suffered complete paralysis of both the lower limbs, etc. was caused by a bullet fired from a revolver. Nature of injury was proved by PW5 and PW7. Bullet recovered at the time of post-mortem of the victim traversed to thoracic spine through the neck from the face near the angle of the jaw, hitting the fifth thoracic vertebra, badly damaging the underlying spinal cord. In such circumstances absence of ballistic expert’s evidence was not fatal to the case of the prosecution, notwithstanding the fact that the FSL, in its report had not expressed a definite opinion about the bullet recovered from the place of occurrence. Therefore in this case the court determined when ballistic expert’s view is not essential though firearm used.

f) Impact of Forensic Evidence (Conviction): The appeal was partly allowed as considering the circumstances appellant could not be attributed the mens rea requisite for bringing the case under section 300, Thirdly of IPC. Moreover there was no enmity between the parties and there was no allegation that before the occurrence, the appellant had premeditated the crime of murder. At the most, it could be said that the appellant had the knowledge that the use of revolver was likely to cause death and as such, the present case would fall within the third clause of section 299 IPC. So, the court held the appellant guilty of “culpable homicide not amounting to murder” punishable under section 304 Pt. II IPC and sentenced the appellant to 5 years rigorous imprisonment48.


a) Background of the case: Trial court doubting the prosecution story as well as their witnesses, acquitted the accused. However, the High Court by the

impugned order, reversed the acquittal and convicted the accused under sections 302, 323 and 307 of IPC. Hence the appeal is filed before the Supreme Court.

b) **Facts of the case:** In the heart of this matter lies a property dispute. An aggression between the deceased’s group and the accused took place just outside the house of the accused. During snatching of the gun of the accused in the ensuing scuffle and aggression, an accidental shot from the bullet of the accused vertically pierced the deceased’s neck. PW2, a member of the deceased group was also injured by a pellet piercing him horizontally. The accused also sustained pharsa and lathi-blows on the butt and barrel of the gun. Fearing for his life, the accused went to his room and locked the door from inside.

c) **Typology of Forensic Evidence Used in the Case:** The injuries on PW2 were caused by firearm and the injuries on the deceased were caused by gunshots. Ballistics were also used to explain the nature of the cartridges and to give an opinion.

d) **Report Of The Experts Regarding The Case:** PW3 the doctor who conducted the medical examination of PW2 found two injuries on his body and opined that the injuries were caused by firearm. He advised that x-rays be taken and that the injuries be kept in observation. In his opinion, the injuries were caused by a gunshot and were of fresh duration which could have been caused at around 4 p.m. The doctor sent the memo, Ext. K-4 on the same day, informing the case of medico-legal nature to the police station. The autopsy on the deceased was conducted by PW5, the doctor, who opined that the cause of death was due to shock and haemorrhage as a result of ante-mortem injuries. He also prepared the post-mortem report. In his opinion, the death of the deceased had taken place on account of the injuries and shock. The Ballistic expert of FSL conducted a test in his laboratory on the gun which was given to him. In his report he clearly opined that injuries 1 and 2 of the deceased were possible by the gun. Injuries on PW2 were possible by another fire. By “fire” it was clear from the record that the ballistic expert was referring to a “firearm”. The ballistic expert
categorically stated that in cartridges of standard .12 bore shotguns, bullets from other rifles cannot be used with small and big pellets.

e) **Ground For Accepting The Forensic Evidence:** The Supreme Court firmly believed the ballistic report and also agreed with the decision of the trial court, that both the injuries were not possible by a single firearm. The court laid that leading experts of forensic science, particularly ballistic experts, do not indicate that from a single cartridge both bullets and pellets can be fired. The court took the aid of Professor Apurba Nandy’s book on “Principles of Forensic Medicine” where he discussed about cartridges elaborately. The court also consulted the book “Firearms in Criminal Investigation and Trials” written by Professor Dr. B.R.Sharma. The court held that the ballistic expert is a disinterested, independent witness who has technical knowledge and experience. The trial judge was fully justified in placing reliance on his report. Moreover, PW5 who conducted the post-mortem of the deceased, clearly stated that the deceased received injuries from a bullet whereas the other doctor who had examined PW2 clearly stated that both injuries were caused by a pellet. The medical evidence also revealed that two injuries caused to the deceased and PW2 were horizontal and not vertical. The trial court opined that a single shot could not have caused a vertical injury to one person and horizontal injury to the other. It was found doubtful and not sufficiently proved that the same shot could have injured PW2 and killed the deceased. Therefore, according to medical evidence coupled with the evidence of the ballistic expert, two firearms might have been used. This version was quite inconsistent with the prosecution story as the prosecution asserted that both the deceased and PW2 were shot from the same weapon.

f) **Impact of Forensic Evidence (Acquittal):** On consideration of the totality of the circumstances, the appeal filed by the appellant was allowed and the
impugned judgment passed by the High Court was set aside and it was directed to forthwith set the appellant at liberty unless required in any other case\textsuperscript{49}.


1) **Background of the case:** The present appeal was filed by the appellant-accused against the order conviction and sentence recorded by the High Court in the Government Appeal. By the said order the High Court had set aside the order of acquittal recorded by the Sessions Judge and convicted the accused for an offence punishable under **Section 302 of IPC** and ordered him to undergo imprisonment for life.

2) **Facts of the case:** PW5, daughter of PW4, the daughter of S, had come to her parental house in the village and was grinding paddy with her mother. At that time the accused P came towards the cattle shed of S and started beating the she-buffallo of S. PW5 and her mother raised an objection. The accused got enraged and caught the wife of S by her hair, in order to beat her. S happened to reach there and cautioned the accused. The accused went inside the room, brought his licensed gun and fired a shot towards S who luckily escaped unhurt. On hearing the noise, the other two brothers of S PW2 and the deceased came out to inquire as to what had happened. The accused started showing his anger towards them also. Both of them, therefore decided to retreat from there. They were, however, chased by the accused who was carrying his gun. PW2 asked the deceased to run fast so that they might be saved. The deceased, unfortunately, turned his face backward to see as to how far away was the accused from him. The accused fired gunshot which hit the deceased on his face and head. He fell down on the ground. PW2 was threatened by the accused and he went inside his house and got himself saved. The deceased became

unconscious and remained as such till he was declared dead. The accused afterwards handed over his single-barrelled gun, bullet 12 bore, two empty cartridges.

c) **Typology of Forensic Evidence Used in the Case:** The deceased died due to firearm injuries. **Ballistic expert** examined the recovered cartridges and the gun.

d) **Report Of The Experts Regarding The Case:** PW7, the doctor who performed the post-mortem opined that the death of the deceased was homicidal and it was due to firearm injuries. The report of the FSL was also on record. It stated that the laboratory received a letter from the Chief Judicial Magistrate along with two 12 bore K.F. Special emptied cartridges marked as ECs 1 and 2 and one piece of gun 12 bore single barrelled No. 1319. It was then stated that the examiner fired five shots from the gun which were marked as TC 1 to TC 5. TC 1, 2 and 5 were misfired and the rest were fired successfully. Regarding EC1 and 2, it was stated that there had been signs of firing pin. But on EC 2 the signs were not specific. Cap of EC 1 had sign of breach and EC 2 had minor sign of breach. On the basis of the examination, a conclusion was given which was in the form of result which was that A i) The cartridge in question EC1 was not fired from the single –barrelled 12 bore No. 319 gun. Aii) The cartridge in question EC 2 had no comparative feature with shot fired from Gun No. 1319 bore. B)On the chemical examination of fouling matter from the gun the nitrate was found from the gun so it was concluded that after last shot the gun was not cleaned but on the date of occurrence whether or not shot was fired from gun designative scientific opinion was not a possibility.

e) **Ground For Accepting The Forensic Evidence:** It was clearly proved by the prosecution that the death of deceased was homicidal in nature and it was
because gun injuries sustained by him. It was also clear from the ballistic expert’s opinion that cartridge EC1 was not fired from the single-barrelled 12 bore No. 1319 rifle said to have been used by the accused. Therefore, the court opined, the appellant accused was entitled to the benefit of doubt.

f) Impact of Forensic Evidence (Acquittal): Depending on the ballistic expert’s report and the medical evidence the appeal was allowed and the order of conviction and sentence recorded by the High Court was set aside. The appellant was given benefit of doubt and acquitted. Since the appellant was in jail he was ordered to be released forthwith\textsuperscript{50}.


Present appeal was filed against order whereby the appellant was convicted under sections 302, 380, 404 and 452 of IPC. Held, it was clear from the witnesses to said recovery that revolver was recovered from box of bed. Therefore noted contradiction pointed out by appellant was not a contradiction in a real sense. Testimony of concerned witness established that room from which revolver was recovered was in exclusive possession of appellant. No evidence was led by defence to show pullanda containing bullets was tampered. Therefore prosecution had been able to establish that that bullets examined by FSL were ones which were recovered from body of deceased. Order imposing sentence was modified. The substantive sentence was maintained with a modification that in default of payment of fine the imprisonment of three years is too excessive therefore it was minimized to six months in default of payment of fine. Rest of the conviction was upheld. Hence, appeal was dismissed.\textsuperscript{51}

\textsuperscript{50} Puran Singh v. State of Uttarakhand (2008) 3 SCC 795

\textsuperscript{51} Gajraj v. State (18.03.2009 – DELHC) MANU/DE/1074/2009

Single bullet was fired by appellant accused which caused injuries to 4 persons thereby resulting death of one of them. The High Court reversed the judgment of acquittal of accused and convicted them under sections **302, 326 IPC**. Supreme Court held that discrepancies in the evidence of the eyewitnesses were in no circumstance minor in nature, which were vital for disbelieving and discrediting their evidence. The said evidence was in conflict and contradiction with medical evidence and ballistic expert’s report in regard to weapon of offence, which was different from the one sealed in police station. In the facts and circumstances, prosecution failed to prove its case beyond reasonable doubt. Hence interference by High Court with trial court’s order of acquittal, held erroneous. There **acquittal** of trial court upheld.\(^52\)


**a)** **Background of the case:** The Sessions Judge convicted accused Gurlabh Singh (GS) under section 302 of IPC and also convicted R under sections **302/34**. Both of them were sentenced to undergo imprisonment for life and to pay a fine of Rs. 3000 each. Accused R was also convicted under section **29 of the Arms Act** and was sentenced to undergo a rigorous imprisonment for three years and to pay a fine of Rs. 500. On appeal the High Court opined that the accused merely exceeded their right of private defence and thus commuted the conviction and convicted GS under section 304 Part I and R under sections **304 Part I read with sections 34** thereof. Hence the State filed an appeal before the Supreme Court whereas another appeal was filed by R against the State in the Supreme Court which were heard simultaneously.

**b)** **Facts of the case:** The prosecution case was that the complainant B along with G and M reached the bus-stand of their village as they were residents of the same village, from where they boarded a bus. Deceased K who was a student of

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the same college where complainant, G and M belonged was also travelling in the same bus. After travelling for a short while they found a Gypsy standing on the road. One R armed with a double-barreled gun signaled the bus to stop. When the bus stopped R and GS, the accused entered into the bus and allegedly dragged the deceased out of it, whereafter on being asked by R, GS fired a shot from his .12 bore double-barrelled gun which hit the deceased. On an alarm being raised, the appellants were said to have run away in the said Gypsy. The deceased was taken to the hospital in the same bus and later he died. The motive for the commission of the offence was said to be that few days prior thereto a quarrel had taken place between the accused and the deceased and the later was threatened by the accused that he would be taught a lesson. On the basis of the statement made by B, an FIR was recorded on the same date. It was revealed from the evidence that the gun belonged to R who had appointed M as his gunman. The accused however contended that the deceased not only alighted from the bus but assaulted them and M, with a sharp edged weapon and tried to snatch the gun from him and the firing took place as a right of Private Defence.

c) **Typology of Forensic Evidence Used in the Case:** This case is related to gunshot injury where the accused fired at the head of the deceased.

d) **Report Of The Experts Regarding The Case:** The doctors PW3 and PW4 who conducted the post-mortem examination reported that the patient was unconscious, his blood pressure and pulse were unrecordable. Injury 1 was declared dangerous in nature while Injury 2 was declared as simple in nature. The probable duration of the injuries was within six hours and injury 1 was caused by a firearm while Injury 2 was a result of a blunt weapon. M was also examined by PW3, who opined that the injuries were simple in nature.

e) **Ground For Accepting The Forensic Evidence:** The court absolutely relied on the medical evidence and opined that the injuries sustained by the deceased clearly indicated that the place of injury of the deceased was on his head starting
from the right frontal region and going to the right parietal and occipital region on the upper part and coming back to the left parietal and frontal region being “U” shaped. The court felt that if it was assumed that a scuffle ensued between both the parties it was admitted that the barrel of the gun was towards the earth. The first shot which was fired, did not have any space to exit as a result it bursted. While the scuffle was going on to snatch the gun, it would be totally unacceptable that the second shot would hit the top of the head of the deceased if the barrel was towards the earth. The autopsy surgeon, PW4 in his report showed the place where the deceased suffered the gunshot injury, in the sketch attached thereto. The place of injury was top of the head which also suggest if the barrel of the gun was facing the ground any accidental fire could have hit the lower part of the body and not the head of the deceased. Moreover, from the medical report of M, it was evident that there were no such injuries which would have prompted the accused to take recourse to the right of private defence. The court also cited many decisions where it was laid down that the right of private defence could not be raised since one of the accused had suffered some minor injuries or the prosecution had not explained the same.

f) Impact of Forensic Evidence (Conviction): In light of the evidences presented before the court the appeal of the State was allowed and that of the accused R was dismissed and the court held that it was a case which fell within the purview of clause Thirdly of section 300 of IPC.


a) Background of the case: This appeal by way of special leave arises out of the judgment and order passed by a Division Bench of High Court of Punjab and

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Haryana whereby the High Court had allowed the appeal filed by the respondent accused, setting aside his conviction and sentence of life imprisonment and fine under section 302 of IPC and under section 27 of the Arms Act, 1959 by giving him the benefit of doubt.

b) Facts of the case: PW2, the father of the deceased was the co-owner of brick kilns in a certain two villages along with respondent Rajinder Singh. About one year prior to the occurrence, a settlement had been arrived at between the parties that that the brick kiln in village M had fallen to the share of PW2 and the one in village A had fallen to the share of R. As per the settlement, a truck had also come to the share of Rajinder Singh who was to pay a sum of Rs. 1,68,000 to PW2 in lieu thereof. On the day of the occurrence PW2 and his son, the deceased, along with PW3 and PW4 had visited the brick kiln at M to make payment to the labourers as they reached that place at about 7.30 am, they found that bricks were being loaded on a tractor trolley by Rajinder Singh and Kuldip Singh who were armed with shotguns assisted by four or five persons. As soon as the complainant party intervened one Rachhpal Singh who too was present, raised a lalkara calling on the respondent Rajinder Singh to fire on the complainant party. The respondent thereupon fired a shot which the deceased near his left eye. Rachhpal Singh and Kuldip Singh thereafter fired shots towards the complainant party but on an alarm being raised by the latter, the accused ran away firing shots in the air. The tractor trolley with bricks loaded thereon was also driven away. The complainants tried to take the deceased in a car to a hospital but on the way he expired. A FIR was thereafter lodged and the body of the deceased was also subjected to post-mortem examination. PW9 ASI picked up two spent cartridges of a .315 bore rifle, four spent cartridge cases of .12 bore shotgun and nine cartridges of .12 bore which were taken into possession and sent for examination to FSL. Moreover, a rifle of .315 bore belonging to PW4 and a .12 bore gun belonging to PW2 allegedly used in causing injuries to the respondents Rajinder Singh and Mohinder Singh were also taken into possession by the ASI.
c) **Typology of Forensic Evidence Used in the Case: Firearm injury** resulted from a shot fired from the rifle. Ballistics were used as the recovered cartridges and cartridge cases were sent for examination to FSL.

d) **Report Of The Experts Regarding The Case:** PW1, the doctor opined that the injury appeared to have been caused with a shot from a rifle, though the possibility that it had been caused with a shot from a .12 bore gun, using single projectile cartridge could not be ruled out. The injuries on the abovenamed Rajendra Singh and Mohinder Singh were also examined by the doctor and their medical reports were obtained.

e) **Ground For Rejecting The Forensic Evidence:** In the instant case, as per the ocular account, shotgun was fired from a distance of 50 or 60 ft. In such situation if the prosecution story would be accepted, pellets would have entered the body of the deceased, making individual pellet holes and not en masse, as appeared from the case. The injury being of the head along with single exit wound would only be compatible with the use of a rifle and not a shotgun. Moreover in the cross-examination of PW1 the doctor too stated that the injury was possible from a rifle as well. However, in view of the categorical statement in the examination-in-chief that the injury was possible with a single projectile .12 bore cartridge the use of a shotgun becomes suspect, as single projectile cartridges were not available in India and even, otherwise could be used with a measure of accuracy only in specialized shotguns. **The court was of the view as the eyewitness account does not support the medical evidence and vice versa, there were some serious doubt in cast on the prosecution story.** A bare look from the report of the medical officer about the injuries of the respondents named above revealed that they could not have been self inflicted and even the prosecution did not raise the issue that the injuries on the respondents were self inflicted. The court also consulted Modi’s Medical Jurisprudence & Toxicology, 23rd Edn. Regarding the matter.
f) **Impact of Forensic Evidence (Acquittal):** The appeal of the State was dismissed as the court opined the judgement of the High Court calls for no interference^54^.


Appeal filed against the judgment whereby appellant found guilty for offence under section 302 of Ranbir Penal Code, 1989 and 7/25 Indian Arms Act. Held, no material on records to disbelieve PW2’s version of the occurrence and doubt his capability to identify the appellant in the lantern light. IO’s omission to seize the lantern which the deceased had been carrying with him at the time of occurrence would not discredit, in any way, the vivid, consistent and natural version of the occurrence which PW-2 had narrated. Prosecution had successfully proved by its evidence led during the trial of the case that the appellant, with intention to commit murder, had fired from his gun at deceased who died on spot as a result of the bullet injuries fired from appellant’s high velocity gun, in the compound of the house of S. Reference was made to ballistic expert. Prosecution failed to prove that appellant had fired from the AK-56 Rifle which had been seized in the case. Conviction under section 27 of Arms Act, were set aside. Appellant’s **conviction** under section **302 RPC** upheld. Appeal disposed.^55^


The Additional Sessions Judge held the accused appellant guilty and convicted him for offence of murder punishable under section **302 IPC**. Hence this appeal. Held, version of PW13 Head Constable was corroborated by PW5. The report Ex. PW24/D, **ballistic**

^54^ *State of Punjab v. Rajinder Singh (2009) 15 SCC 612*

^55^ *Sultan Ganai v. State (11.05.2009 – JKHC) MANU/JK/0116/2009*
expert opined that the firearm under reference could be cocked by entangling with chain provided, if change lever was not at “S” (safety) position and if trigger was pressed in cocked condition, it would fire. Thereby, irresistible conclusion reached after thorough examination of weapon of offence was that the entangling of chain during alleged scuffle between accused and deceased could not lead to make the gun fire accidentally. Lastly, if deceased caught hold of SAF/gun by its muzzle with his right hand, no bullet injury on his right hand would have been possible and if he held gun at mouth of muzzle, entry wound on right hand would have been at front and not at back of hand. Thus when facts were clear it was immaterial that no motive was proved and absence of proof of motive did not break link in chain of circumstances connecting accused with crime, nor mitigated prosecution case. Hence, trial judge rightly convicted appellant for murder of deceased under section 302 of IPC on circumstantial evidence. Appeal was dismissed, conviction upheld.\textsuperscript{56}


Appeal was filed by accused against judgment of conviction and sentence under section 302/34 IPC and section 307/34 IPC. Held, the very fact that A-2 was present with A-1 and was supplying live cartridges to A-1 to kill deceased showed that prosecution had proved beyond reasonable doubt that A-1 and A-2 had committed offence punishable under section 302/34 IPC. When the intention to cause murder was proved by the prosecution, the mere fact that victim escaped the gunshot injury was not relevant. The evidence of PW23 the ballistic expert was helpful to the prosecution to prove that with the help of the SBBL gun which was seized and examined by him that A-1 fired at the instigation of A-2, and the shirts which were seized were bearing holes caused due to passage of lead pellets. Thus judgment of conviction and sentence of the trial court was upheld and the appeal was dismissed.\textsuperscript{57}

\textsuperscript{56} Arvind Kumar v. The State (N.C.T. of Delhi) (02.07.2010 – DELHC) MANU/DE/4281/2010

\textsuperscript{57} Changananmad Aiyappa v. The State of Karnataka (24.09.2010 – KARHC) MANU/KA/1246/2010

Trial Judge had convicted appellant for offence of murder under section 302 IPC on the basis of an oral dying declaration made by deceased to police officials. Hence this appeal. Held, unless the deceased fell in an extraordinary category, there was every possibility that bullet reached the heart, slowly through venous circulation and till it reached the heart, the deceased remained alive. Therefore, testimonies of police witnesses were true. Thus, oral dying declarations made to police officials were sufficient evidence to convict appellant for murder of his wife. The pistol recovered at the instance of the appellant and the bullet recovered from the dead body were sent to FSL ballistics for comparison. As per the FSL report, the country made pistol had an 8mm bore and the bullet recovered from the body of the deceased corresponded to 8mm cartridge but due to insufficient striation marks no opinion could be given that the bullet was fired from the firearm in question. Appeal dismissed, conviction upheld.58


Accused had fired at deceased with country-made pistol from a very close range. Doctor who had conducted post-mortem examination found one wound of entry about 3cm x 2.5 cm with blackening and charring and also recovered 160 pellets and three wads from inside the dead body. Medical evidence clearly suggested use of such a weapon from almost point blank range. Appellant’s plea of false implication was rejected. Therefore, conviction of the appellant under section 302/34 of IPC was confirmed.59


59 Hari Singh And Another State of Uttar Pradesh (2010) 13 SCC 756

Appellant was charged under sections 148, 302, 149 of IPC and section 27 of Arms Act. There was no infirmity in the prosecution story. Statements made by witnesses were all made during the course of investigation. String of consistency and trustworthiness existed in evidence. Findings recorded by the Trial Judge appeared borne out from the materials on record. Petition dismissed. The opinion of the ballistic expert also revealed that there was no infirmity in the prosecution story or its case on account as was pointed out by the learned counsel of the appellants. **Conviction upheld.**


a) **Background of the case:** The statutory appeals were filed under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 and under section 379 of the Criminal Procedure Code against the final judgment and order of the High Court of Delhi, whereby the High Court reversed the order of acquittal passed by the Additional Sessions Judge, Delhi and convicted Sidhartha Vashisht @ Manu Sharma under sections 302, 201/120B of IPC and section 27 of the Arms Act, 1959 and sentenced him to undergo imprisonment for life for the offence under section 302 IPC together with fine of Rs. 50000 to be paid to the family of the victim and also sentenced him to undergo imprisonment for four years for the offence under section 27 of the Arms Act. He was further sentenced to undergo imprisonment for four years for the offence under sections 201/120-B together with a fine of Rs. 2000.  

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b) **Facts of the case:** A party was going on at Qutub Colonnade Restaurant called “Tarmarind Café” at midnight. The liquor was being served by bartenders, namely, Jessica Lal (deceased) and PW2. At about 2 am appellant M along with his friends came there and asked for two drinks. The waiter did not serve him liquor as the party was over. The deceased and PW6, who were also present there, tried to convince him that since the party was over there was no liquor available with them. On refusal to serve liquor, the appellant took out a pistol and fired one shot at the roof and another at Jessica Lal which hit near her eye as a result of which she fell down. PW20, who was present there, stopped the appellant and questioned him as to why he had shot the deceased and demanded the weapon from him but he did not hand over the pistol and fled away. Jessica Lal died afterwards in Apollo Hospital. An FIR was lodged in the nearby police station on the statement of PW2 under section 302/201/120B of IPC. On inspection of the site, two empty cartridges were seized.

c) **Typology of Forensic Evidence Used in the Case: Ballistics** was used to determine from which firearm the recovered empty cartridges were fired.

d) **Report Of The Experts Regarding The Case:** Three ballistic experts had concurred that empty cartridges had been fired from two different weapons. Their reports supported the statement of PW2. There was no evidence on record that both the shots were fired from one weapon.

e) **Ground For Rejecting The Forensic Evidence:** The court held that the opinion of R the ballistic expert only said that “it appears that the two cartridge cases are from two different pistols”. Such a vague opinion of the expert could neither be relied upon nor can be any basis to come to a conclusion that there were two persons who had fired two different shots. The court interpreted that the word “appear” implies that the expert’s opinion was unsupported by reasons which became inconclusive and stood discredited for the purpose of placing reliance. Similarly, the opinion of expert PW95 was again inconclusive. His response to the court questions revealed that he was extremely confused as to
the issue which had to be addressed by him in the capacity of an expert. In the concluding part of his testimony he reaffirmed the opinion given by him which was that without test firing the empties from the weapon of offence no conclusive opinion can be given. The court reasoned that an expert is only an expert if he would follow the well-accepted guidelines to arrive at a conclusion which is supported with logical reasoning. It is well settled that while giving reports after the ballistic examination, the bullets, cartridge cases and the cartridges recovered and the weapon of offence recovered are carefully examined and test firing is done at the FSL by the said weapon of offence and then only a specific opinion is given.

f) Impact of Forensic Evidence (Convicted): Although the laboratory reports in the said case were vague and ambiguous and could not be relied upon to reach any specific conclusion regarding the incident yet from the discussions and other evidences the court held that the prosecution had established its case beyond doubt against the appellants and the appeal was dismissed as it was devoid of any merit. The court was in agreement with the conclusion arrived at by the High Court61.


a) Background of the case: The trial court acquitted the present appellant against which an appeal was filed by the Government of India as well as a revision was filed by the informant in the High Court of Allahabad. The High Court, setting aside the judgment of acquittal passed by the trial court convicted the appellant under section 302 of IPC for committing the murder of one R and sentenced him to undergo rigorous imprisonment for life. During the pendency of the Government appeal, the father of the accused died and the court acquitted R,

another accused as there was no evidence to show that R shared a common intention to commit murder.

b) **Facts of the case:** The appellant along with his father and brother was tried on charges under section 302/307/34 of IPC. According to the prosecution the accused, and his two sons and the members of the prosecution party were agnates with a history of litigation behind them. There were disputes between the two sides over the open courtyard between their houses. Earlier, the informant, had filed a suit and obtained an ex parte decree against the father of the accused who had filed a petition for setting aside the ex-partes decree. The father of the accused in turn filed another suit claiming that the informant was living in his house as a licensee and was refusing to vacate it despite the termination of the licence. On the relevant day, when the informant and his family members were standing outside towards the east of their house, the younger son of the informant started sweeping the land between the two courtyards. At that point of time the appellant forbade him from coming over the land as it belonged to them. When the younger son persisted with his sweeping, the appellant attempted to assault him on which the informant and his other family members intervened. The appellant then went inside his house and came back carrying his licensed double-barrelled gun. He was accompanied with other two accused who were allegedly armed with spear and lathi. On the instigation of the father of the accused the appellant aimed his gun at the informant and fired. At that moment, when one of the daughter’s of the informant tried to stop him, the shot fired by the appellant hit on the right side of her chest. The appellant fired another shot aiming another family member of the informant but it missed him. Thereafter on the halla raised by the prosecution party, and the arrival of more two members of the prosecution party, the accused went back. The daughter of the informant was taken to hospital, where she was declared dead. An FIR was lodged on the same day.

c) **Typology of Forensic Evidence Used in the Case:** This is a case of gunshot injury which was proved by medical evidence.
d) Report Of The Experts Regarding The Case: Post-mortem was conducted on the body of the deceased and a note was sent by the doctor of the hospital to the police informing about the arrival of the deceased in the hospital with a gunshot injury.

e) Ground For Accepting The Forensic Evidence: The court held that from the facts of the case it failed to see any inconsistency in the medical evidence and the ocular evidence. The court pointed to the medical evidence and said according to the medical evidence the shot had hit the head of the humerus that got punctured and the signs of the wound were medically towards below and it was from the right to left. Once the pellets hit a hard substance like the humerus bone, they can get deflected in any direction and on that basis it could not be said that there was any inconsistency between the medical evidence and the ocular evidence. Therefore, the court was in agreement with the High Court that the ocular evidence in this case was highly consistent and left no room for any doubt about the commission of the offence by the appellant.

f) Impact of Forensic Evidence (Conviction): As there was no merit in the appeal, it was dismissed and the conviction of the High Court was upheld62.

14 SCC 641

One M, ex-Mayor of Mumbai, along with his 7-8 associates were allegedly sitting in an open shed when a car came there and three persons started firing at M and others indiscriminately who were sitting in the shed. In the incident 3 persons died, while some others including M sustained grievous injuries. The High Court by its impugned judgment confirmed conviction of A-1 under section 3(2) of Maharashtra Control Of Organised Crime Act, 1999 read with section 120B IPC. Appeal filed by A-4 was dismissed and his conviction under section 3(2) and section 3(4) of MCOC Act, 1999

read with section 120B IPC was confirmed. A-5 and A-6 were acquitted of all the charges by the High Court. Though conviction of A-7 was confirmed under section 302 read with section 34, 120B read with section 3(1)(i) of MCOCA etc. his death sentence was substituted with rigorous life imprisonment. Conviction of A-8 under section 302 read with section 34 IPC read with section 3(1)(i) of MCOCA Act, 1999 read further with section 109 read with section 120B IPC and conviction under section 307 IPC read with section 3(1)(ii) of MCOCA read with sections 34, 109 and 120B IPC for attempt to murder etc. were maintained. A 9mm pistol recovered at instance of A-5 and it established that same was used by him. Further report of the ballistic expert established and proved that weapon and bullets tallied with each other and that one of victims of shoot-out was killed due to a bullet fired from a 9mm pistol. Besides, medical evidence also showed that death of three deceased was caused by injuries sustained due to firearms. A-6 had also used pistols and fired during shoot-out. Moreover, though in case of A-7 High Court held that evidence did not disclose that bullets fired from AK-56 rifle had resulted in death of any person, it convicted him under section 27(2) of Arms Act. Hence High Court erred in holding that conviction under section 27(3) r/w section 7 of Arms Act could not be sustained in respect of A-5 and A-6. Hence, the Supreme Court confirmed the conviction and sentences imposed on A-1, A-4 and A-8 reversing the acquittal of A-5 and A-6 and confirmed the commutation of death sentence to life imprisonment of A-7.\textsuperscript{63}


The deceased was shot dead by appellants. The report of the FSL indicated that the pistol recovered from the site of the incident was found to be in working condition. All circumstances taken together clearly formed a continuous and unbroken chain as to leave no manner of doubt that deceased was shot dead by appellants. Held, the

\textsuperscript{63} Mohd. Farooq Abdul Gafur And Another v. State of Maharashtra (2010) 14 SCC 641
judgment of the Trial Court and the High Court convicting the two accused persons under section 302/34 of IPC was confirmed.64


Accused alleged to have fired two shots at victim, PW3, over loss of income on account of fact that water for irrigation was then being provided by father of PW3, which till then was provided by father of accused. Accused apprehended at spot with gun and spent cartridges. FIR was lodged without delay. Testimonies of eyewitnesses were found credible. Medical evidence corroborated prosecution version and chain of events. There were differences of opinion of two doctors on point of determination. Held, both doctors were not ballistic experts so as to provide any expert opinion which could be safely relied upon while deciding the case. Difference of opinion between two doctors, which in facts and circumstances of instant case, does not have any material bearing on prosecution case and was not formidable, so as to grant benefit of doubt to accused. The conviction of the High Court under section 307 of IPC was upheld.65

60. Ashish Kumar @ Lambu v. State (02.08.2011 – DELHC) MANU/DE/3212/2011

Trial Court convicted appellant for offences punishable under sections 394/398/34 of IPC and section 27 of Arms Act. Hence, this appeal. Held, prosecution had established its case beyond reasonable doubt against appellant and evidence against him was clear and cogent. PW16 Puneet Puri, SSO Ballistics FSL Rohini has stated in his testimony that the country made pistol Ex.PWF1 (Ex.P1) and Ex.P2, the cartridge was a firearm within the ambit of Arms Act. He has also deposed that empty cartridge Ex.P2 was fired from the country made pistol Ex.P1. The weapon of offence was seized and sealed from the Appellant on the spot which fact has been deposed by PW15 and PW8. There is no evidence placed on record to show that there was any sort of tampering

64 Santokh Singh And Another v. State of Punjab (2010) 8 SCC 784

done with the case property. PW7, the MHCM has deposed that the case property was intact and sealed. PW16 has stated that when the case property was received at FSL the seals were intact. Thus, there was no tampering with the case property. There was no illegality in judgment passed by Trial Court convicting appellant. However ossification test of appellant was conducted and report was submitted in that regard wherein it was opined that age of appellant was greater than 20 years. In view of status report filed and ossification test it was clear that appellant was juvenile at time of commission of crime. Thus appellant being juvenile at time of commission of crime was entitled to get benefit under Juvenile Justice Act. Therefore order of conviction and sentence was set aside. Appeal was disposed of. **Acquittal** as appellant was juvenile at the time of commission of crime. 66

61. Gurjinder Singh v State of Punjab (2011) 3 SCC 530

a) **Background of the case:** Being aggrieved by the judgment of conviction rendered by the High Court the appeal had been filed by the convict. The appellant was convicted for the offence under section 302 of IPC and had been awarded sentence of imprisonment for life and to pay a fine of Rs. 10000 by the trial court which was subsequently confirmed by the trial court.

b) **Facts of the case:** The deceased has lent a sum of Rs. 5 lakhs to the accused appellant and the said amount had not been returned by the accused. On the fateful day the deceased and the accused along with another (PW4) were going to resident village of the deceased in a Maruti Car. The deceased was driving the car and the accused was sitting next to him, whereas PW4 was sitting on the rear sit. Suddenly, the accused asked the deceased to stop the car in the pretext of easing himself and when the accused stopped the car, the accused stepped out of the car and went to the back side of the car and thereafter came near the driver’s sit with his pistol and fired one shot on the right temple of the deceased and another shot on the neck of the deceased. Although PW4 raised alarm but as he was threatened of dire consequences and thereafter the accused fired on his

66 Ashish Kumar @ Lambu v. State (02.08.2011 – DELHC) MANU/DE/3212/2011
own left arm and another shot below his own knee. PW4 ran away and kept mum but afterwards filed an FIR. It is to be noted that before the FIR was filed by PW4, another FIR was filed by the accused by framing a story that one H fired at them causing the death of deceased and injuring him when they were travelling in the Maruti Car and as a consequence PW4 tried to ran away but ultimately he kept PW4 near the dead body of the deceased and came to lodge the complaint. Thereafter the SHO went to the place of offence and prepared inquest report and took possession of three empty cartridges, one empty cartridge from below the driver’s seat and other materials. The accused was ultimately arrested and at his instance the pistol from which the bullets were fired was recovered from a place half a kilometre away from the culvert.

c) **Typology of Forensic Evidence Used in the Case: Ballistics** were used to determine from which pistol the recovered cartridges were fired.

d) **Report Of The Experts Regarding The Case:** As per the report of the FSL Ext. P-51, the cartridges which were received from the spot of the offence were fired from 7.65 mm pistol and the blood which was found from the pieces of glass was human blood of Group B. Post-mortem of the body of the deceased was conducted by the doctor (PW1). It was found that there was a lacerated punctured wound on the right temporal region and a lacerated punctured wound on the right side of the middle of the neck. There was a dark black area around both the wounds. Lacerated unpunctured wound on the left side of his neck and behind the left ear lobe was also found. The fourth injury on the deceased was on the back of the neck at the level of C 6 vertebra and 3 cm away from the middle of the left side of the neck. The cause of death was shock and haemorrhage due to injuries to brain and neck. The injuries were sufficient to cause death in the ordinary course of nature.

e) **Ground For Accepting The Forensic Evidence:** The story which was forwarded by the FIR of the accused appeared to be incorrect to the court. On the contrary, the court found truth in the FIR filed by PW4, because the injuries
inflicted upon the accused prima facie appeared to be self-inflicted from the medical evidence. Looking through the nature of the bullet injuries suffered by the accused, it was very clear that he was shot from a very close range. The said fact was revealed from the presence of burn injuries, black area around the wound of the bullet. Had it been fired from a distance, the presence of burn injuries or dark marks around the wound would not have been there. Moreover when a weapon is fired from a close range, normally gunpowder which comes along with the bullet makes dark burn marks around the wound. Both wounds on the accused were having such black marks which would not have been there if he had been shot from a distance, as the burnt gunpowder does not go much far from the muzzle of the weapon. Presence of dark burn marks around the wound showed that the bullet injury had been inflicted from a very close distance. Such burn marks would not have been there if he had been running away from the car. Thus, the story put forward by the accused in his FIR about his being shot by another person does not appear to be correct. Apart from this the prosecution also proved beyond reasonable doubt that the accused had the ownership and possession of the pistol.

f) **Impact of Forensic Evidence (Convicted):** The court was satisfied from the discussion and upon perusal of evidence the court was of the view that the trial court as well as the High Court, while confirming the order of conviction did not commit any error and the order of conviction therefore deserved to be confirmed. The appeal was therefore dismissed.

MANU/HP/1366/2011

Accused convicted of offences under sections 307, 324 and 326 of IPC by the trial court. Hence present appeal. Held, PW3, the doctor, categorically stated that the possibility of receiving injury by fire-arm cannot be ruled out and also stated that he did not extract any pellet from the wound at the time of operation. The gun and the


67 Gurjinder Singh v State of Punjab (2011) 3 SCC 530
recovered material were sent for ballistics expert for his opinion and the report of the ballistic expert was obtained. There was no cogent evidence on the file to prove requisite intention of the accused to kill deceased. Mere circumstance that a firearm was used to cause injury to victim would not be sufficient to establish that accused had committed an offence under section 307. Conviction converted from section 307 to be that under section 326 of IPC. Appeal was partly allowed by modifying the conviction.68

63. Manjit Singh v CBI (2011) 11 SCC 578

a) **Background of the case:** These appeals were preferred against the common judgment and order passed by the learned Sessions Judge, Designated Court (TADA), Kanpur wherein a judgment of conviction and order of sentence, was passed against the present appellant and others and they were convicted for offences punishable under section 302, section 302/34 and section 302/120B IPC respectively. They had been sentenced to undergo imprisonment for life and to pay a fine of Rs. 10000 each. The accused had filed appeal to this court under section 19 of the TADA Act against the impugned judgment and order of the court.

b) **Facts of the case:** The deceased, Shri L. D. Arora, Additional Collector of Customs, Allahabad was assassinated in the area of PS Cantonment, Allahabad. The nephew of the deceased PW2 had lodged the FIR. According to the report, that on the fateful day the deceased reached his house by his car. PW2 on the same day visited the house of the deceased. He found that his uncle’s (deceased) car was parked at the same place where he used to park his car regularly. After knocking the door when he entered his uncle’s house, a neighbor told him that something had happened to his uncle. He immediately rushed to the place where his uncle parked the car. Upon arrival of the spot, he saw his uncle was lying unconscious on the driving seat in a pool of blood. He immediately took his

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uncle to the hospital where it was declared as brought dead. Later the investigation was entrusted to CBI by the Government of India. The prosecution stated that the present appellant along with other accused entered into criminal conspiracy to eliminate L.D. Arora to strike terror among the customs officials with a view to preventing anyone from passing on information about their smuggling activities or their involvement in the Bombay Blast Case which occurred in 1993. Pursuant to the conspiracy, one of the accused supplied the present appellant with money, one 9mm pistol, 12 cartridges and a Maruti Car.

c) **Typology of Forensic Evidence Used in the Case: Bullets** were recovered from the dead body and **ballistic expert** opined that the three empty cartridges that were recovered were fired from the same 9mm pistol.

d) **Report Of The Experts Regarding The Case:** The post-mortem of the dead body was carried out by Dr. A. K. Shrivastav who prepared a post-mortem report which was duly countersigned by Dr. S.L Diwan, Senior Surgeon of the hospital. The post mortem report revealed that there was three entry wounds caused by firearm and corresponding three exit wounds on the upper parts of the body below the pinna of right ear, below and behind the tip of right mastoid process and the last was 2 cm below it. The cause of death was ascertained to be ante-mortem head injuries caused by bullets. The ballistic expert opined that three empty cartridges that were recovered were fired from the same 9 mm pistol.

e) **Ground For Accepting The Forensic Evidence:** In the light of the unimpeachable circumstantial evidence clearly indicating the modus operandi and motive in the murder, the court was of the view that the Designated Judge (TADA) was justified in convicting and sentencing the appellant for the offences under sections 302/34 of IPC.
f) **Impact of Forensic Evidence (Convicted):** The present appellant was however acquitted of charges under sections 3(2) and 3(3) read with section 3(1) of TADA Act. The appeal of the appellant was thus dismissed.


Accused conspired to kill deceased. He was convicted under sections **302, 307, 120B and 34 IPC.** Held for offence punishable under section 120B, prosecution need not necessarily prove that perpetrators expressly agreed to do or cause to be done illegal acts. Agreement may be proved by implication. Conspiracy consist not merely in intention of two or more, but in agreement of two or more to do an unlawful act by unlawful means. In the present case PW2 and PW6 were natural witnesses and had no reason to falsely to implicate A-2 and A-4. From their evidence it was established that that revolver was procured to murder the deceased. The revolver was also examined by **ballistic** expert. Motive behind murder of deceased was grudge nursed by A-4 against deceased. There was no infirmity in the order of conviction passed against A-2 and A-4 by the trial court. Reasons given to acquit A-1 and A-3 were justified. Criminal appeal was disposed accordingly. Therefore conviction upheld and appeal dismissed.

65. **Mohandas Naik v. State (05.05.2011 – BOMHC) MANU/MH/0627/2011**

Present appeal was filed against order of conviction under section **302 and 506 of IPC** and section 3 read with section **25(1B)(a) of Arms Act.** Held, on perusal of evidence adduced by prosecution, court found that there was no premeditation or preplan on part of appellant in commission of crime. On contrary, on perusal of evidence of concerned witness, it transpired that there was altercation between appellant and victim prior to gun shot. Witness also stated that appellant was claiming that victim was abusing his mother and his wife which forced him to fire from gun. On consideration of all material

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69 *Manjit Singh v CBI* (2011) 11 SCC 578
on record and circumstances as found from evidence of prosecution, Court found that incident took place on spur of moment due to some altercation between the appellant and deceased. In such case appellant cannot be said to have committed offence punishable under section 302 IPC but under section 304 II IPC. Conviction of appellant under provisions of section 506 IPC cannot be said to be faulted. Therefore Trial Court had rightly concluded on basis of material on record specially evidence of concerned witnesses that appellant had committed offence punishable under section 506 IPC and sentenced him to imprisonment. Hence appeal was partly allowed as conviction was altered.71


Appeals were filed against judgment of Special Judge convicting appellants for committing various offences under POTA (Prevention of Terrorism Act, 2002, IPC and Arms Act), IPC and Arms Act including section 302/120B of IPC. In facts of present case, medical and ballistic evidence could, by no stretch, square with ocular evidence which was very weak and fragile. No support could be lent to weak and doubtful substantive evidence by confessional statement of A-1 insofar as reliability of that piece of evidence was shaken both by its lack of veracity and voluntariness. Under such circumstances, one set of weak and doubtful evidence of sole eye-witness and ballistic expert could not find corroboration and support from other weaker pieces of evidence in form of confessional statements. Charge under section 302 was not proved beyond reasonable doubt and hence conviction for offence punishable under section 120B read with section 302 and charge under sections 3[1] and 3[2][a] of POTA could not survive against any of the appellants. And upon being acquitted of those charges, orders on those charges were set aside. In appeal conviction of A-1 for the offence punishable under section 307/120B IPC and section 4/3[2][b] of POTA and section 25[1-B][a] and section 27[1] of Arms Act, was confirmed and maintained. A-2 was convicted for offence punishable under section 3[3] of POTA. A-3 was convicted under section

71 Mohandas Naik v. State (05.05.2011 – BOMHC) MANU/MH/0627/2011
307/120B. A-4 and A-7 to A-11 was convicted for offence punishable under 3[3] of POTA and sections 25[1-B][a] of Arms Act. The conviction recorded by the Trial Court of A-12 for offences punishable under section 3[3] of POTA was maintained and upheld. Appeals were partly allowed. Conviction altered.\textsuperscript{72}


Trial court convicted accused appellants under sections 399 and 402 of IPC and section 25 of Arms Act. Hence these appeals. Held, prosecution could not prove that there were persons who had conceived design for committing dacoity. Existence of conspiracy was also not established, therefore no offence under section 399 IPC was established even from recoveries so effected and examined by ballistic expert, which otherwise were doubtful. Prosecution failed to prove that object of assembly of accused persons was to commit dacoity nor prosecution could prove that any of the persons or one of the persons so assembled had the object in mind. Accused persons were acquitted. Appeals allowed.\textsuperscript{73}


On 22.12.2000 at about 9 am in the evening some intruders started indiscriminate firing and gunned down three army jawans. However no intruder was killed and the intruders were successful in escaping by scaling over the rear side boundary wall of the Red Fort. Conviction and death sentence under sections 121, 121A, 120B and 302 of IPC was awarded by the Trial Court and High Court. Subsequent searches lead to the recovery of large quantity of arms and ammunitions including hand grenades at various places in Delhi and Srinagar. Rifle was hidden in thick bushes behind Red Fort. Death

\textsuperscript{72} Mohd. Pervez Abdul Kayuom Shaikh and Ors. v. State of Gujrat and Anr. (29.08.2011) MANU/GJ/0892/2011
\textsuperscript{73} Prakash Chand and Others. V. State of H.P. (19.07.2011 – HPHC) MANU/HP/1426/2011
sentence awarded to appellant who was a Pakistani national and belonged to terrorist group, Lashkar-e-Toiba (LeT) upheld. The judgment of the Trial Court and the High Court convicting the accused and awarding death sentence and other sentences on all other counts were confirmed. Appeals were dismissed.74


Present appeals were filed against order of conviction under sections 120(B), 201, 302 and 365 of IPC. The accused persons led the concerned witnesses and his team to place and pointed out place where site plan was prepared. All articles of seizure were kept in pullandah and sealed. From the incriminating materials and the circumstances, it was clearly established by prosecution that murder of deceased was committed by S and L. It appeared that concerned witness had last seen deceased alive in company of appellant S and L. Prosecution had also established that appellants S and L committed offence under section 201 IPC because they had caused death if deceased and after having knowledge of said facts, they caused disappearance of evidence after offence of murder by throwing dead body in water. It was also established that both appellants conducted offences under section 302 and 120(B) of IPC but prosecution failed to establish its case under section 120(B) against Y. No expert’s opinion or doctor’s opinion was obtained regarding use of alleged ‘katta’ to commit the offence. There was no evidence on record to connect appellant Y under section 120B of IPC. Appellant Y had denied the suggestion for providing the country-made pistol to the other two accused, as there was no reason to do so. Admittedly, as per the report of the ballistics expert, the said pistol was not in a working condition. Therefore, it makes no sense to hold that the present appellant provided the weapon of offence. Therefore impugned conviction against Y was set aside and he was acquitted. Appeal of appellant S and L was dismissed except to the extent that they were acquitted of charge under section 365 of IPC. Therefore conviction of S and L were modified and their appeal dismissed.75

70. Satyavir Singh Rathi, ACP v. State (2011) 6 SCC 1

a) **Background of the case:** The trial court recorded conviction of 10 police personnels under various sections separately. The present appellant was convicted under sections **120B, 302/120B, 307/120B, 193r/w 120B, 193, 201/34 and 203/34 of IPC** and sentenced to imprisonment for life, rigorous imprisonment for seven years and two years for different offences separately along with different amount of fines for the different sections. On appeal the Delhi High Court after re-examining the entire evidence concluded that the conviction of the appellants under section 302/120B IPC could not be sustained but their conviction under sections **302 and 307** was liable to be maintained with the aid of section **34** instead of section **120B** of IPC. Against the conviction of the High Court this appeal have been preferred.

b) **Facts of the case:** The Delhi police was in search of a notorious criminal and was being tracked by the Inter-State Cell of the Crime Branch of Delhi Police. The appellant Satyavir Singh Rathi, ACP and the incharge of the Inter-State Cell on receiving information that Mohd. Yaseen, the criminal would be visiting a place near Mother Dairy, Patparganj directed Inspector Anil Kumar to keep a watch near the Mother Diary Booth. At the relevant time, the deceased Jagjit Singh, Tarunpreet Singh and Pradeep Goyal were present there due to some work. Jagjit Singh was mistaken with the criminal by inspector Anil Kumar. As a consequence Anil Kumar informed the police party. The police party armed with service weapons reached the place. The deceased were in a car and it was driven by Jagjit Singh. The police party followed the car and as the car halted at Barakhamba Road, the police force surrounded the car and fired indiscriminately from all the sides. As a result Pradeep Goyal and Jagjit Singh died instantaneously and grievous injuries were caused to Tarunpreet Singh. Three occupants were taken to RML Hospital where two people namely Pradeep Goyal and Jagjit Singh were declared dead on arrival. On getting information with regard to the shootout PW42 Inspector Niranjan Singh, rushed to the place of incident followed by senior officials followed by DCP.
inspection of the car, PW42 recovered a 7.65 mm pistol loaded with 7 live cartridges in the magazine, a misfired cartridge in the breech and two spent cartridge cases of 7.65 mm bore from inside the car. The items were taken in possession and an Fir was lodged under sections 186/353/307 IPC and under sections 25 of the Arms Act, against the occupants of the car. In the complaint PW42 recorded that after the car stopped the police surrounded it and knocked at the driver’s window asking the occupants to come out but instead of doing so, Jagjit Singh started firing at the police party from inside the car resulting in gunshot injuries to two constables and that it was thereafter the police personnel had opened fire at the car in self defence with a view to immobilize the occupants and prevent their escape. The very next day, Dinesh Chand Gupta, father-in-law of Pradeep Goyal made a complaint to the Lieutenant Governor, Delhi on which another FIR was registered against the police personnel under section 302/34 of IPC. Pursuant to the orders of the Government of India, the investigations were handed over to CBI and the two FIR’s were amalgamated for the purpose of investigation. CBI on investigation came to the conclusion that the police party fired at the car of the deceased without provocation and the previous FIR was intended to act as a cover-up for the incident and to justify the police action. CBI accordingly found no shot was fired from inside the car and no police officials were injured. The investigation also revealed that 7.65 mm pistol cartridges recovered from inside the car had been implanted by the members of the police party with a view to creating a defence and screening themselves from the prosecution.

c) **Typology of Forensic Evidence Used in the Case: Ballistics** was used to notify the origin or direction of firing of bullets.

d) **Report Of The Experts Regarding The Case:** It was contended by the defence that the two shots were fired from inside the car. From the site photograph which had been perused it was found that the driver’s window was intact. It had come from evidence of PW Tarunpreet, that the car’s AC was on when the firing took place and the windows were drawn up. Had the shots been
fired from inside the car through the driver’s window or the windshield, which was of tinted glass, some powder residue would have been left around the bullet holes as the shots would have been fired from almost a touching distance. PW37 from CFSL who had examined the car very minutely detected no such residue and also testified that the appreciable powder distance of 7.65 mm pistol could be one to two feet but would depend on the sitting posture of the person firing. He also stated that in all at least 29 bullet holes which had been detected on the car of 9mm, 7.62 mm and .380 calibre weapons and most of the seven exit holes in the car could have been caused by bullets fired from the rear and left side into the car and exiting thereafter, although the possibility of an exit hole being caused by a bullet fired from inside the car could also not be ruled out. He further pointed out as the bullet fired at constable C remained embedded in his body, and had not been taken out for medical reasons, it was not possible to give an opinion whether it was a bullet of 7.65 mm caliber. The defence story that constable K and C suffered injuries on account of the firing of two shots from inside the car, was further belied by the medical evidence. Three bullet injuries were found on the person of constable C, which indicated blackening. These injuries could not have been caused from inside the car as the blackening from pistol would be, at the most, from a foot or two. It also required to be emphasized that all the weapons were fired single projectiles (bullets) whereas the distance between the gunshot injuries on the two injured policemen show at least three different wounds of entry on each of them. On the contrary, it appeared that the injuries suffered by them were caused by the firing amongst the policemen as they had surrounded and fired into the car indiscriminately and without caution, ignoring the fact that they could be a danger to themselves on crossfire or uncontrolled firing.

e) **Ground For Accepting The Forensic Evidence:** The court was of the view that the cumulative effect of the evidence revealed a starkly patent fact that the defence story as projected was a palpably false one and the police officials involved having realized almost immediately after the incident that they had
made a horrific mistake, immediately set about creating a false defence. The trial court and the High Court had rightly held on the basis of the overall assessment that the defence version was a concoction and that the prosecution story that it was the unprovoked firing by the appellants which had led to the death of two people and grievous gunshot injuries to the other had been proved on record.

f) **Impact of Forensic Evidence (Convicted):** The appeals were dismissed and the **convictions** were upheld.\(^7\)

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a) **Background of the case:** The appeal by special leave was directed against a common judgment and order passed by the High Court of Jharkhand whereby the conviction of the appellant S under section 302 read with section 34 and section 27 of the Arms Act, 1959 has been confirmed and the sentence of rigorous imprisonment for life imposed upon the said appellant by the trail court was enhanced to sentence of death.

b) **Facts of the case:** The deceased, who was a sitting member of the Jharkhand State Legislative Assembly was returning to Nirsa from Dhanbad riding pillion seat of a motorcycle that was being driven by the first informant. At about 2.45 p.m. when the duo reached a place near Premier Hard Coke, PW16, the first informant heard the sound of a gunshot from behind. When he looked back he found the appellant S was driving a motorcycle on the left of PW16 with an unknown person, sitting on the pillion seat carrying a pistol in his hand. The pillion rider is alleged to have fired a second time from close range which hit the deceased in the head, who slumped on the back of the informant thereby disturbing the balance of the motorcycle and bringing both of them to the ground.

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\(^7\) *Satyavir Singh Rathi, ACP v. State (2011) 6 SCC 1*
Then the motorcycle driven by the appellant was stopped, whereupon the pillion rider got down walked back to the place where the deceased had fallen and abused the informant verbally and asked him to run away from there failing which even he would be killed. So, the threatened informant hurried away from the spot whereupon the pillion rider fired a third bullet at the deceased.

c) **Typology of Forensic Evidence Used in the Case:** The death of the deceased was homicidal caused by gunshot injuries.

d) **Report Of The Experts Regarding The Case:** The deposition of the doctor (PW14) who conducted the post-mortem examination of the deceased along with two other doctors left no doubt that the death of the deceased was the result of two ante-mortem gunshot wounds which the doctor witnessed described in their deposition in the court and the post-mortem report.

e) **Ground For Accepting The Forensic Evidence:** The prosecution had led evidence to prove that the empty cartridges of 9mm bullets with engraving and trigger mark on them were seized from the place of occurrence. One of the empty cartridges was recovered from near the dead body while the other was recovered from the mud footpath on the southern side of the road. This was evident from the seizure memo marked as Ext. 1/9. Moreover, the cause of the homicidal death was never questioned by the accused before the trial court or even before the Apex Court. The line of cross-examination of the doctor who conducted the post-mortem examination too did not question the veracity of the opinion of the doctor who opined that the deceased had died because of gunshot injuries received by him. In the light of the above, the failure on the part of the investigating officer in sending the bloodstained clothes to the FSL and the empty cartridges to the ballistic expert would not be sufficient to reject the version given by the eyewitnesses. This is especially so when a reference to the ballistic expert would not have had much relevance since the weapon from which the bullets were fired had not been recovered from the accused and was not, therefore, available for comparison by the expert.
f) **Impact of Forensic Evidence (Conviction):** As a result, the judgments and orders under appeal were affirmed with the modification that instead of sentence of death awarded by the High Court, the appellants shall suffer rigorous imprisonment for life. The appeals were accordingly allowed but only in part and to the extent indicated\(^7\).


a) **Background of the case:** These appeals were filed against the common final judgment and order passed by the High Court of Rajasthan whereby the High Court disposed of the appeals acquitting KS, LR, BS, Smt. SB, Smt. GK and Smt. BK of all the charges and altered the conviction and sentence of SS, BS and AS (Arjun Singh) from sections 302/149 IPC and sections 307/149 IPC to sections 302/34 and 307/34 IPC passed by the trial court.

b) **Facts of the case:** An information was received by the police that a cross-firing had taken place between the Rajputs of the village. The police proceeded immediately towards the spot and recorded the statement of H who was also injured in the firing and later died. It was stated by H that when he was standing outside his house the respondent herein fired at him from a muzzle-loaded gun from the roof of K whereby 2-3 bullets hit him on the left hand and another 2-3 hit his abdomen and left thigh. On hearing his cries two of his brothers came there and took him inside the house and after leaving him there when they were going to inform police, they were also shot by guns as a result of which both of them received injuries and later one of them died. It was also stated Smt. SB, Smt. GK and Smt. BK were also present on the roof of K and tried to kill the other family members of the deceased with deadly weapons. The injured were taken to hospital where some of them succumbed to the injuries.

\(^7\) Sheo Shankar Singh v. State of Jharkhand & Another (2011) 3 SCC 654
c) **Typology of Forensic Evidence Used in the Case:** The deceased and the injured all received **gunshot injuries.**

d) **Report Of The Experts Regarding The Case:** Dr. Manmohan Sharma (PW1) has explained to the court that all the injuries were caused by gunshots. It was further revealed that RS one of the brothers oh H had also sustained injuries. It had been seen from the x-ray report that RS had fracture of femur bone and according to doctor (PW1), the injuries were serious in nature. He also opined that the injuries of H and R were sufficient to cause death in the ordinary course of nature. In his evidence, he also explained that the death of H was caused due to septicaemia shock as a result of multiple ante-mortem injuries to abdomen. With reference to a suggestion PW1 had denied that blackening and tattooing marks can be possible only when gunshots were fired from a distance of 3 or 4 ft. In respect of the same, PW1 explained in detail in his cross-examination that the same marks are possible even in the case of gunshots which were fired from a distance of more than 3 or 4 ft and it depends upon the nature of gun, gunpowder, cartridges etc.

e) **Ground For Accepting The Forensic Evidence:** The court stated that if the evidence of PW1 and his reports Exts. P-1 and P-4 along with the evidence of RS (PW2) was analysed, it leads to a conclusion that gunshot injuries tallied with medical evidence and both the deceased persons died due to the same reason. Similar conclusion arrived at by the High Court cannot be doubted. Since materials placed by prosecution clearly proved guilt of accused AS, B, and S who were armed with guns and with their common intention they fired gunshots, resulting in death of R and H as well as causing injuries to PW2.
f) **Impact of Forensic Evidence (Conviction):** Therefore the conviction, as altered by High Court was confirmed.

73. **State of Uttar Pradesh v. Naresh And Others (2011) 4 SCC 324**

The respondents accused were convicted under sections 302/34, 307/34 and 379/37 of IPC for causing firearm injury and causing death of one person. Trial court believed eyewitnesses including injured one and convicted all accused. High Court allowed appeal and acquitted all as the FIR was ante-timed and antedated, witnesses were interested and inconsistent and that gun, rifle and ammunitions snatched from victims by accused were not recovered. Held High Court had given undue importance to minor contradictions in the statement of complainant and injured witness. Non-recovery of guns from accused would not be sufficient to discredit prosecution case as accused were not traceable till proceeding under section 82/83 CrPC was initiated. Evidence of injured witness could not have been brushed aside by High Court without assigning cogent reasons. High court made too much of insignificant discrepancies. Thus appeal was allowed and the sentences imposed by the Trial Court were restored. **Conviction of Trial court restored.**


Appellant challenged judgment, by which appellant was held guilty for offence punishable under section 397 of IPC. Held, when accused himself refused to participate in a test identification parade, it was not open to him to contend that statement of eyewitnesses made for first time in court wherein they specifically pointed towards him as a person who had taken part in commission of crime, should not be relied upon. This plea was available provided prosecution was itself responsible for not holding a test identification parade. There was no injury to any person. Although, the prosecution

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78 State of Rajasthan v. Arjun Singh & Others (2011) 9 SCC 115
79 State of Uttar Pradesh v. Naresh And Others (2011) 4 SCC 324
lead evidence of recovery of one pistol and one live cartridge which was sent to the ballistic expert but said recovery of weapon was totally doubtful, therefore, ingredients of section 397 IPC was missing in the case. Therefore, present case did not fall under section 397 of IPC but fell under 392 IPC. Therefore impugned judgment was modified to extent that appellant was convicted under section 392. Appeal partly allowed by modifying conviction.\textsuperscript{80}

75. Firoz Abdul Latif Ghaswala & Anr. v. State Govt. of NCT of Delhi (03.09.2012 – DELHC) MANU/DE/4582/2012

The appellants were convicted under section 5 of Explosive Substance Act, 1908 read with sections 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 and section 120B IPC for the possession and supply of large quantity of RDX with detonators which was certainly a preparatory act to aid the commission of terrorist act which provided enhanced penalty if a person is found in possession of explosive substance with intent to aid a terrorist. A huge cache of arms and ammunitions were also recovered. From the quality and quantity of explosives with the appellant, a clear inference could be drawn that they entered into a conspiracy as well as acts preparatory to commission of a terrorist act and facilitated some terrorist activity. Thus the ingredients of the act of conspiracy stood duly proved. Under section 5 of Explosive Substance Act, the onus shifted to the appellants to show that the possession was for a lawful object, after the initial burden of proving the possession of explosive substance had been discharged by the prosecution. The appellants failed to discharge the said burden. Various types of examinations were conducted by the ballistic expert on the receipt of the sealed parcels. On the basis of physical examination, chemical analysis of barrel wash and test firing, he opined that two 7.62 mm/AK 56 assault rifles marked W1 and W2 contained in parcels no. A and B respectively were fire arms as defined in Arms Act and were in working order and these were used and fired. Six 7.62 mm/AK 56 assault rifle magazines marked M1 to M6 contained in parcel No. F were in working order and could be fitted in two 7.62 mm assault rifles marked W1 and W2 in question. One hundred and eight (180) 7.62 mm/AK 56 assault rifle

cartridges marked C1 to C180 contained in parcel No. F were ammunitions as defined in Arms Act and were live ones. The conviction was upheld and the appeal dismissed.81

76. Kandan @ Viral Kandan v. State (22.11.2012 – MADHC)
MANU/TN/2278/2012

The appellant was convicted under section 25(1-B)(a) of the Arms Act and section 302 IPC. Held, opinion offered by expert would only show that country made gun had been used and bullet which was found in body of deceased had been shot only from weapon. In the considered opinion of court, there was no case for defence to project before Court. Thus, from evidence of PW1 sand 2 and that of ballistic expert opinion, prosecution had clearly established that it was accused, who really shot deceased and caused his death. Appeal was dismissed and conviction upheld.82

77. Md. Moinul Haque v. The State of Assam (06.06.2012 – GUHC)
MANU/GH/0350/2012

The appellant was convicted under section 25(1)(a) of the Arms Act, 1959 which was upheld by the Additional Sessions Judge. Hence this petition. Held, it was found that police officials concerned did not take proper care and steps for keeping seized arms under safe custody in sealed cover till it was produced before SDJM and even in dispatching seized arm to Director FSL. Prosecution had failed to satisfy court that there was no chance of manipulation while seized pipe gun was in custody of police for a long period of 125 days. Scientific expert tested gun on firing but it was not stated so in his report. Prosecution had to prove that at time of raid and search independent witnesses were called by police and they were present at time of search and seizure,

81 Firoz Abdul Latif Ghaswala & Anr. v. State Govt. of NCT of Delhi (03.09.2012 – DELHC) MANU/DE/4582/2012

82 Kandan @ Viral Kandan v. State (22.11.2012 – MADHC) MANU/TN/2278/2012
which the prosecution failed to prove. PW2, wife of accused person, who according to
prosecution was present at time of raid and search but she denied basic fact of
recovery/seizure of the articles. Therefore on perusal of case records and evidence on
record it was found that prosecution miserably failed to establish case against the
convict petitioner. The order passed by the court was set aside and the acquittal was
recorded. Petition was allowed.83


a) Background of the case: Aggrieved by the judgment and order passes by the
High Court of Rajasthan affirming the conviction of the appellant under section
302 IPC and the sentence of life imprisonment imposed, the present appeal had
been filed upon grant of special leave by the court.

b) Facts of the case: PW23 lodged a written complaint that, while he along with
his nephew and some other family members were sitting on the road in order to
go to Baran, G, with whom the complainant had old enmity along with his sons,
which included the appellant and son-in-law came in a tractor armed with
different weapons including a firearm. Immediately, on reaching the spot the
appellant-accused Ram Singh fired from a gun at R as a result of which the said
R died on the spot. It was alleged that the accused appellant also fired at S,
causing injuries on his hand. On the basis of the complaint an F.IR. was
registered and after completion of the investigation and committal for trial to the
Court of Session charges under sections 147/148/149/341/307/302 read with
section 49 of IPC were framed against the accused.

c) Typology of Forensic Evidence Used in the Case: Gunshot resulted in the
death of the victim R. Although according to the prosecution witness four shots
were fired in the course of the incident, only one empty cartridge was recovered
from the spot by PW20. The weapon of offence also had not been seized.

83 Md. Moinul Haque v. The State of Assam (06.06.2012 – GUHC) MANU/GH/0350/2012
d) **Report Of The Experts Regarding The Case:** As, there was a failure to on part of the prosecution to recover the weapon of offence, no expert report was sought for.

e) **Ground For Accepting/Rejecting The Forensic Evidence:** In this case although forensic evidence was not sought for, the court supported the view of the learned State counsel that the failure of the prosecution to recover the weapon of assault or all the four cartridges from the place of occurrence was not fatal to the prosecution case as the prosecution had otherwise proved its case based on testimony of injured as well as the independent eyewitnesses.

f) **Impact of Forensic Evidence (Convicted):** The court was of the view that there was no difficulty in reaching the conclusion that the conviction of the appellant accused Ram Singh under section 302 IPC and the sentence imposed thereunder was fully justified. Therefore the appeal was dismissed and the conviction and sentence imposed on the appellant accused was confirmed\(^84\).


The respondent accused was sentenced to death for the commission of offence under section 302 IPC and sentenced for the offences under section 25 and 27 of the **Arms Act, 1959**. The ballistic expert examined the pistol and cartridges recovered and gave his detailed report. The prosecution proved its case beyond reasonable doubt. The court opined although the commission of the crime was heartless and shocking yet it could not be said that the appellant is irredeemable as a human being for the court to say that death penalty is the only sentence fit for his crime and that it falls within the rarest of care category of offences. In view of the above discussion,

\(^84\) *Ram Singh v State of Rajasthan* (2012) 12 SCC 339
the sentence of death imposed by the Trial Court was not confirmed and it was accordingly reduced to life imprisonment, which shall mean the rest of his life. The conviction and sentence imposed in respect of the offences under the Arms Act were for the above reasons, upheld. The death reference is answered accordingly. The Appeal is, for the above reasons, allowed in part. **Conviction** commuted to imprisonment for life.\(^8^5\)


- **a) Background of the case:** This appeal was filed against the judgment of conviction and order of sentence passed by the High Court of Uttarkhand whereby the learned Single Judge has set aside the conviction under sections 307 and 380 of IPC, 1860 but maintained the conviction and sentence under section 324 IPC passed by the learned Sessions Judge and sentenced him to three year rigorous imprisonment. The Sessions Judge convicted the accused Gopal Singh under sections 307, 324 and 380 of IPC and sentenced him to suffer rigorous imprisonment for seven years, one year and four years respectively.

- **b) Facts of the case:** An FIR was lodged by PW2 alleging that on hearing a gun shot sound and the cry of his brother, PW1, when he rushed to the shop of PW1, he found the accused and his brother were beating him with hands, fists and stones. It was also alleged that PW3 had also sustained a gun shot injury during such incident. The informant along with his nephew took PW1 and PW3 to the hospital. It was further alleged that the accused persons took away Rs. 25000 from the shop of PW1 and Rs. 1200 from his pocket. After taking the injured persons to the hospital an FIR was lodged to this effect. The investigating officer after the incident recovered pellets, seized the bloodstained clothes of the injured persons and got them examined by the doctor, PW4.

\(^{8^5}\) *State v. Navin Ahuja (20.11.2012 – DELHC) MANU/DE/5590/2012*
c) **Typology of Forensic Evidence Used in the Case:** From the medical evidence it was clear that the injury was caused by firearm.

d) **Report Of The Experts Regarding The Case:** According to the doctor’s evidence the injury had been caused by the gunshot and the pellets had been recovered from the walls of the shop room of the appellant accused.

e) **Ground For Accepting The Forensic Evidence:** The court relied on the view of the doctor that the injury was not grievous, and that there was no fracture but only muscle injury. Moreover the weapon fitted in to the description as provided under section 324 of IPC.

f) **Impact of Forensic Evidence (Conviction):** Considering the totality of the facts and circumstances the court had sentenced the accused to rigorous imprisonment of one year under section 324 of IPC along with a direction to pay a sum of Rs. 20000 towards compensation as envisaged under section 357(3) of CrPC to the victim. Hence the appeal was disposed of.


a) **Background of the case:** The two appellants M & P were tried before the Learned Additional Sessions Judge for the offences punishable under sections **302 and 307 read with section 34 of IPC** and sentenced each of them to undergo rigorous life imprisonment and to pay a fine of Rs. 5000. The High Court affirmed the conviction of the two appellants. Hence the present appeal had been preferred.

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86 Gopal Singh v. State of Uttarkhand (2013) 7 SCC 545
b) **Facts of the case:** PW1, along with his younger brother, the deceased, were going on a tractor driven by the deceased. A-1 accompanied by A-2 to A-5 parked their car in front of the tractor. A-1 fired a gunshot, which hit the deceased on the right cheek, who then fell down from the tractor. A-2 armed with a .12 bore gun also fired at both the brothers. PW1 jumped down from the tractor and saved himself by taking shelter behind the back wheel of the tractor and received an injury on his right elbow. PW2 father of the deceased had reached the place of occurrence from the nearby field and witnessed the incident. All the accused fled away from the place of occurrence with their weapons. After taking appropriate steps the accused persons were apprehended and A-1 while in the custody led to the recovery of his licensed .315 rifle along with the cartridges. Similarly on the disclosure of A-2 .12 bore gun was recovered.

c) **Typology of Forensic Evidence Used in the Case:** Three empty cartridges of .315 bore rifle and two empty cartridges of .12 bore were collected from the spot. The seized articles were sent to FSL for ballistic examination.

d) **Report Of The Experts Regarding The Case:** PW3, the autopsy surgeon had clearly opined that the deceased had died because of gunshot injuries. The FSL report, Ext. P-AM/1, states with equal clarity that one cartridge was fired from the left barrel of DBBL Gun No. 56088, the other cartridge from its right barrel and three cartridges were fired from Rifle No. AB 97/5473. It was also brought out from the evidence that the gun and the rifle were sent to the FSL in sealed parcels. As per the report the shots were fired from the weapons sent to the laboratory. It had been established by cogent evidence that the weapons belonged to the appellant accused and licences were issued in their favour.
e) **Ground For Accepting The Forensic Evidence:** On the scrutiny of the evidences and analyzing the fact and situation of the present case the court held that the ocular testimony of PW1 and PW2 received clear corroboration from the medical evidence as well as from the report of the FSL. Therefore the prosecution had proved its case beyond reasonable doubt. Although there were minor discrepancies, they were bound to occur when an occurrence of present nature takes place and one cannot expect the witnesses to state with precision. Moreover, judicial evaluation of the evidence should be done by considering the totality of the facts and circumstances of the case and not on scrutiny in isolation and further the concept of proof beyond reasonable doubt cannot be made to appear totally unrealistic. Therefore, the conviction of A-1 was proper. Regarding the conviction of A-2 the court on scrutiny of the evidence found that A-2 had accompanied A-1 and was present at the spot. That he had carried a weapon and that it had been established by the prosecution that the cartridges had been fired from his gun and that both the appellants were closely related. Thus the cumulative facts clearly established that Appellant 2 shared the common intention with Appellant 1.

f) **Impact of Forensic Evidence (Convicted):** In view of the above premised reasons, the appeal was dismissed and the convictions were upheld.


The appellant had been convicted under section **302 and 323 of IPC** for murder of two persons by causing injuries to them with firearms. The doctor who conducted post mortem deposed that the deaths were homicidal and caused by gun shot injuries. Although the trial court did not rely on the report of the ballistic expert but the High Court could not agree with the findings recorded by the trial court. Although the police

had not sent the bullet/led recovered from the body of the deceased for FSL examination, it did not mean that the FSL report and the findings recorded therein should be disbelieved. PW21 the Ballistic expert had submitted that he had given the report after conducting test of the firearm and ammunition. He was not cross-examined and his report as well as his testimony remained completely unchallenged. Two fired and one empty cartridges were recovered from the spot and the third empty cartridge was found in the country made pistol when seized. Exhibit PW-10/D recorded that three cartridges of 315 bore were made available to the FSL for test firing. These were test fired. The test fired cartridges were marked TC1 to TC3. The microscopic examination of the test fired cartridges revealed that they were fired from the same country made pistol which was seized from the appellant. The FSL Report, therefore, clearly corroborated that the empty cartridges found at the spot were fired from the arm which was recovered from the possession of the appellant. The cartridge found in the pistol was fired from the said pistol. The conviction was upheld and the appeal was dismissed.88

83. Sanjay Dutt v. State of Maharashtra (2013) 13 SCC 1

Criminal Appeal No. 1060 of 2007

The appellant in pursuance of the Criminal Conspiracy and during the period from January 1993 to April 1993, agreed to keep in his possession and acquired 3 AK-56 rifles and its ammunition, 1 9mm pistol and its cartridges and hand grenades, unauthorisedly, which were part of the consignments smuggled into the country by Dawood Ibrahim Kaskar and his associates knowingly and intentionally that these were smuggled into the country for the purpose of committing terrorist acts and that he thereby committed terrorist acts and committed an offence punishable under section 3(3) of TADA. Sanjay Dutt, A-117, had been convicted for the offence punishable under section 3 and 7 with sections 25(1-A), 25(1-B)(a) of the Arms Act, 1959 and sentenced to suffer rigorous imprisonment for 6 years along with a fine of Rs. 25000.

The rod and the spring recovered from the possession of the co-accused were sent to FSL for examination. The experts opined that the said articles correspond to that of an AK-56 type rifle but did not correspond to similar components used in AK-47 rifle.\(^{89}\)

84. State of Himachal Pradesh v. Suresh Kumar (27.06.2013 – HPHC)  
MANU/HP/0383/2013

The appeal was filed by the State against the acquittal recorded by the trial court acquitting respondents from the charges under sections **302 of IPC and section 27 of Arms Act**. Held, the **ballistic** expert reported that three live cartridges Ext. P-22 to P-24 and the examined cartridges Ext. P-25 and P-26 were the same and gun Ext. P-15 contained the traces of firing of gun-shot. There were also traces of firing gun-shot on the second gun and the empty cartridge which was marked by him had been fired through gun Ext. P-15. The traces of lead were also found in the hole in net and cotton. Plastic pieces recovered by the doctor from the head of the deceased could be a part of wad and the pellets Ext. P-1, P-2 and Ext. P-10 examined could also be a part of Ext. P-27 fired cartridge, though no definite opinion was expressed. The court opined that the prosecution failed to prove that the crime cartridge had been recovered from the accused as alleged, beyond doubt and further it could not be linked with the gun Ext. P15 of the accused. The evidence of the Expert thus was discrepant and not worthy of any credit. Hence, from the evidence on record, the **acquittal** recorded by the trial court were reasonable and thus the appeal was dismissed.\(^{90}\)

MANU/UC/0319/2013

The appellant accused S was convicted under sections **302 and 120B of IPC**. Accused M was convicted under section **25 of Arms Act**. The police collected four cases of 32 bore cartridges and one case of 315 bore from the spot on 09.12.2009. At the instance

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\(^{89}\) Sanjay Dutt v. State of Maharashtra (2013) 13 SCC  
\(^{90}\) State of Himachal Pradesh v. Suresh Kumar (27.06.2013 – HPHC) MANU/HP/0383/2013
of accused M, a country made 315 bore pistol and two live cartridges were recovered by the IO. The recovered articles were sent to the FSL for analysis. Besides, 3 fired 32 bore jacketed bullets recovered from the dead body during the autopsy was also sent for the FSL examination. Though the report of FSL could not be marked as an exhibit, but it was admissible in the evidence as the same had been forwarded by the Junior Scientific Officer (Ballistics) of the laboratory and was available on the record. The prosecution proved its case beyond the shades of any doubt. Held, since judgment was based on proper appreciation of evidence, it required no interference under appeal. Appeal was dismissed. Conviction of trial court upheld.91


The appellant was convicted under sections 302/186/34, IPC, section 25 and 27 of Arms Act. The police recovered .315 bore country-made loaded pistol, four live cartridges etc. from the spot. The recovered article were sealed and sent to the ballistic expert for examination. The report of the expert revealed that the country made pistol and revolver were in working order. He opined that the bullets were fired from the revolver. The court had no reason to doubt the opinion of the expert in the report. The prosecution proved its case beyond reasonable doubt. The appeal was dismissed and the conviction upheld.92


The accused was convicted under section 25 of the Arms Act, 1959, section 307/34 and 120B of IPC. The forensic evidence also completely supported the case of the prosecution. The FSL report proved that the pistol carried by the Appellant, which was thrown by him on the first floor after it failed to fire, was in fact unable to be even test-fired. As far as the other pistol recovered from the accused was concerned, the


ballistics report showed that rounds recovered from the spot, were fired from it. The blood on the clothes of the Appellant matched the blood group of PW-2. The above evidence established conclusively the involvement of the Appellant. The story put forth by the Appellant about his paying a friendly visit to PW-2 at the Trauma Centre to enquire about his well-being appears wholly unbelievable in the background of the previous incident for which FIR No. 369/10 was registered at PS Gannaur. The medical evidence also clearly established that the gun shot injuries suffered by PW-2 were dangerous to his life. Appeal was dismissed and conviction was upheld.93


a) Background of the case: The trial court convicted the four appellant accused under sections 302, 307 read with section 34 of IPC which was confirmed by the High Court. The trial court sentenced them to imprisonment for life and fine. Hence this appeal by Special leave was preferred before the Supreme Court.

b) Facts of the case: R and M were attacked by the four appellants, armed with pistols. Six persons armed with barchi/jayee/sela also participated in the attack. R and M, were surrounded by these ten persons who made a hue and cry that they should be killed. O, RL and RR (PW10) rushed towards the site. R, M and RL were killed and RR was injured.

c) Typology of Forensic Evidence Used in the Case: Firearm injury along with the cumulative effect of the various sufferances was the cause of the death of the deceased.

d) Report Of The Experts Regarding The Case: According to the post-mortem and evidence given by the doctor, no firearm injury was found on the body of deceased R. Dr. D. K. Purohit (PW18) stated that he had conducted the post-

mortem examination on the dead body and his cross-examination categorically stated as a matter of fact that there was no firearm injury on the body of R.

e) **Ground For Accepting The Forensic Evidence:** Although the trial court and the High Court, preferred the ocular evidence as that was reliable even though the medical evidence showed that deceased R had not received the firearm injury but the Supreme court did not support the views of the courts below in this regard. The Supreme Court substantiated that in the face of the categorical factual assertion and absent of any cogent evidence to the contrary, the conclusion arrived at by the High Court and the trial Court that deceased R suffered gun shot injury could not be accepted. Although the ocular evidence undoubtedly showed that deceased R was fired by the appellant Mohanlal but in view of the unchallenged testimony of the doctor, it was quite clear that the gun shot did not hit deceased R and the cause of his death was the cumulative effect of the various sufferances by him. The court also agreed with the view of both the courts that the appellants were armed with pistols and that they had fired at the victims with the intention of killing them as nothing was shown to the court which suggest the contrary.

f) **Impact of Forensic Evidence (Conviction):** Although the belief of the Supreme Court regarding the gun shot injury of R, the deceased did not have any impact on the final decision of the court since the court were in agreement with the courts below that appellants had the common intention of causing the death of deceased R, M, RL and RR. Wherein RR survived but was injured. The court therefore upheld the concurrent findings of the courts below and confirmed the conviction and sentence of the appellants. As there was no merit in the appeal they were dismissed.\(^{94}\)

\(^{94}\) *Bastiram v State of Rajasthan* (2014) 5 SCC 398
a) **Background of the case:** The accused were charged under sections 302, 307 read with section 34 of IPC and sections 25 and 27 of the Arms Act. The trial court acquitted all the accused. However in the appeal filed thereagainst, the High Court convicted J under section 302 and sentenced him to life imprisonment and a fine of Rs. 5000. The benefit of doubt was however granted to accused MS and A. Hence the instant appeal was filed by J.

b) **Facts of the case:** The disputed land was given to one G by the Gram Panchayat vide a resolution. Inspite the appellant accused J and his brother MS continued asserting their ownership over the said land. On the day of occurrence, J allegedly parked his combine harvester on the disputed land which was objected to by the deceased K (wife of C), M (wife of PW3), B (daughter of S) and other ladies present there. But J paid no heed to them and abused them. In the meantime, C, PW3 and PW2 came there, and told J not to park his combine harvester in the disputed land. At that junction MS and A (nephew of accused) arrived at the scene. The initial altercation took a violent turn and both the parties started fighting with each other. It was alleged that the accused J fetched a DBBL, 12 bore gun from his house, while the other accused MS and A returned unarmed, but raised a lalkara in filthy language encouraging the accused party to kill members of the complainant party. Accused J fired two shots which hit K, B and PW2. Accused MS thereafter snatched the gun from J, and fired hitting B and M. K succumbed to the injuries on spot. PW16, the IO had clearly deposed that he had seized four empty cartridges C-1 to C-4 from the spot where he arrived after the incident.

c) **Typology of Forensic Evidence Used in the Case:** Ballistic report was prepared to tally the cartridges fired from the gun.

d) **Report Of The Experts Regarding The Case:** The ballistic report opined that the 12 bore fired cartridge cases C-1 to C-4 were fired from a firearm but not
from DBBL gun i.e. the W/1, Ext. 15, the weapon that was seized from the custody of the accused Joginder Singh.

e) **Ground For Accepting The Forensic Evidence:** The court held that from the perusal of the ballistic report, it was manifest that they were not fired from the weapon Ext.15, seized from the house of the appellant accused. Moreover the learned trial judge had already taken note of the fact that the pellet marks were there on the walls of the house of the appellant, which were visible from the photographs, Exts. DA and DC. The Supreme Court was also convinced with the view of the trial judge that there were also other persons present on the spot who had come with arms. It was also demonstrable from the materials brought on record that there were people from Harijan Community who had come to the disputed land and fired at the house of the accused persons. The said conclusion was also supported by the empties found from the spot which were not fired from the gun of the accused. Moreover there were no materials on record to connect the gun shot injuries suffered by the deceased which proved that the shots were fired from the appellant’s gun. The court held that in the instant case, the ballistic report, Ext. PUU, though refers to the mutilated pellets stated to have been recovered from the body of the deceased K and also the two different lead pellets stated to have been recovered from the body of M, but is not definite that 12 bore DBBL gun, Ext. W/1, that was seized from the appellant, was used for firing the gunshots. This fact had been totally ignored by the High Court in an extremely cryptic manner.

f) **Impact of Forensic Evidence (Acquitted):** In view of the aforesaid analysis, the appeal was allowed and the accused was acquitted on the basis of the ballistic report. The judgment passed by the High Court was set aside and the judgment of the trial court was restored.95


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95 *Joginder Singh v State of Haryana* (2014) 11 SCC 335
The appellants were convicted under section 302/34 and 307/34 of IPC for the offence of murder and attempting to murder. All appellants open fired from their country made pistol upon deceased and informant. The presence of eye witnesses and their statements found to be natural and believable. Medical evidence and ballistic expert report was also in support of oral evidence. Delay in lodging FIR was properly explained. Contradictions, variations and discrepancies found was not of such nature which adversely affected consistent and clear statements of witnesses on material points. When medical evidence and ballistic report fully supported prosecution case then non-examination of all witnesses did not affect the veracity of statements of eye witnesses. Appellants had committed offence in furtherance of their common intention. Hence, trial courts finding in that respect modified to the extent that appellants were liable to be convicted and sentenced taking recourse of section 34 IPC instead of section 37 IPC. Appeals were dismissed with some modifications in the finding of trial court. Conviction upheld with modification.96


Present petition was filed challenging cognizance taken against accused for offences under sections 25(1B)(a) of Arms Act and 2(m)(5) of Motor Spirit and High Speed Diesel Order, 1990. Held, complaint disclosed presence of arms and ammunition in vessel and also names of Captain and Crew with their National identities and passport details. Evidence collected by police did not show any material which disclosed commission of grave offences prejudicial to peace, order and interest of India like offences under Unlawful Activities (Prevention) Act, 1967 etc. The seized arms were sent to the Ballistics Expert of Tamil Nadu Forensic Sciences Department and a certificate was obtained that they are prohibited arms as classified by the Arms Act, 1959. Ship was in our territorial sea and out of necessity entered the Indian Territory and their action was saved by principle of ‘innocent passage’ therefore Crew and Security Guards could not be prosecuted for offence under Arms Act. Materials showed that the ship was registered in Sierra Leone and was into Anti piracy business.

Therefore it was obvious that ship had run out of provisions and fuel and it came into Indian Territorial waters. Accused was liable for prosecution for violating Control Order, 2005. Petition disposed of. **Conviction** modified.97

92. M. B. Suresh v State of Karnataka (2014) 4 SCC 31

**a) Background of the case:** The appellant and his father was put on trial for the offences punishable under sections **302, 114 and 427 of IPC and sections 3 read with sections 25 and 27 of the Arms Act.** The Additional Sessions Judge acquitted both the accused of all the charges. Aggrieved by the same, the State of Karnataka preferred an appeal. The High Court reversed the acquittal and held the appellant M.B, Suresh guilty of the offences punishable under sections 302 and 427 of IPC and sections 25 and 27 of the Arms Act. However his father was found guilty only under section 427 of IPC. The appellant was sentenced to undergo life imprisonment for the offence under section 302 of IPC and a fine of Rs. 5000. He was also sentenced to undergo one year’s imprisonment and a fine of Rs. 2000 for the offence under section 27 of the Arms Act. Both of them were sentenced to undergo simple imprisonment for one week for the offence under section 427 and a fine of Rs. 5000 each. Sentences were directed to run concurrently. Aggrieved by the same, the appellant had preferred the present appeal whereas his father preferred Special Leave which was granted.

**b) Facts of the case:** According to the prosecution there was a long-standing enmity between the family of the informant and the accused in respect of certain land over which the accused father was claiming tenancy rights. According to the prosecution, on the relevant day the deceased along with elder brother, cousin, a friend and one S came to the residence of H in the village in a tractor trailer for unloading the gunny bags. After unloading the gunny bags, they sent the tractor-trailer along with the labourers to the coffee plantation to pluck coffee seeds. However, the aforesaid persons stayed back at the house of H to have coffee and later at night while they were going to coffee estate by the side

of the wetland, C was ahead of them. At that time C was shot at by the appellant M.B. Suresh. After the first shot his father instigated him to fire again and on the instigation the appellant fired the second shot at the deceased and thereafter left the place. PW1 to PW3 rushed to the place where C had fallen on the ground and in order to save him they carried him to the hospital but unfortunately he died because of the gunshot injury on their way to the hospital. On the basis of the report of PW1 a case was registered in the Police Station. Post-mortem of the dead body was conducted.

c) **Typology of Forensic Evidence Used in the Case:** It is a case of *gunshot* injuries which was revealed from the post mortem.

d) **Report Of The Experts Regarding The Case:** The doctor PW10 found nine injuries on the person of the deceased. As regards the cause of the death, the doctor had stated that it was because of shock received from gunshot injuries.

e) **Ground For Accepting The Forensic Evidence:** The court absolutely relied on the submission of PW10 the doctor, who had conducted the post-mortem examination on the dead body of the deceased. He found nine injuries on his person out of which six were skin-deep of the size of 0.5 cm or less than 0.5 cm. The doctor categorically stated in his evidence that there were no internal injuries found and the gun was fired from a distant range. As regards the cause of death the doctor opined that it was because of shock but he had nowhere stated that it was due to the injuries caused by the appellant. The court was of the view that for holding the accused guilty of murder, prosecution had to prove first that it was a culpable homicide. It was true that the deceased died of shock but there was no evidence to show that the shock had occurred on account of injuries caused by appellant. Prosecution case was that after the deceased sustained injuries while he was being taken to hospital, he died on the way. The court interpreted that any mishandling of deceased by person carrying him to hospital so as to cause shock cannot be ruled out. Doctor neither stated that the
deceased bled profusely which could have caused shock. Therefore act of the appellant could not be held to have caused death and conviction of appellant under section 302 cannot be sustained. However, there was no doubt that M shot at the deceased with an intention to kill him or at least he had knowledge that the act would cause death. Allegations thus proved constituted an offence under section 307 of IPC.

f) Impact of Forensic Evidence (Convicted): As a result the appeal by the appellant M. B. Suresh was partly allowed on the basis of the medical evidence where the conviction of the appellant under section 302 of IPC was set aside and was altered to section 307 of the same Act and he was sentenced to undergo rigorous imprisonment for ten years. However his conviction under the other penal provisions were maintained. The appeal preferred by the father of the appellant through Special Leave was dismissed.


The appellant was convicted under section 39 of the Arms Act, 307 and 353 of IPC. A country made pistol and cartridges were seized from the appellant which was examined by the ballistic expert. He confirmed that the pistol and cartridges satisfied the definition of a firearm and ammunition under the Arms Act. The court dismissed the appeal of the appellant as the prosecution was able to prove the case beyond reasonable doubt. Conviction affirmed.


The accused were convicted under sections 302/120-B and 201 IPC by the Additional Sessions Judge. Ballistic expert examined the cartridges which were recovered and used to commit the offence. A Metallic Sheet was also examined in the laboratory and

98 M. B. Suresh v State of Karnataka (2014) 4 SCC 31

marked along with the cartridges. The report of the ballistic expert was accepted and it corroborated the prosecution case. The prosecution was able to prove its case beyond reasonable doubt. Hence the appeal were dismissed and the conviction upheld.\textsuperscript{100}


(A-1) murdered his wife by shooting her dead with his revolver. Police recovered empty bullet cartridge, a bullet and an air pistol from A-1’s flat. Medical evidence established that death was caused by bullet injury in head and neck of deceased. CFSL report established that bullets recovered from flat and skull of deceased were fired from A-1’s revolver. The Hon’ble Supreme Court confirmed the conviction of the appellant for the offence punishable under section 302 and 120B read with section 201 of IPC. But the death sentence awarded to appellant Sushil Sharma, A-1, was commuted to life sentence, for whole of the remaining life of the appellant.\textsuperscript{101}


The appellants were arrested for the offence of committing murder under section 302 IPC. From the disclosure made by the accused V, the weapon of offence was recovered. Thereupon the bullet which had been recovered from the body of the deceased along with the weapon of offence and a recovered empty cartridge were sent for forensic examination. The country made pistol was found to be in working order. FSL report proved beyond doubt that the bullet found in the body of the deceased was fired from the pistol which was recovered pursuant to the disclosure statement made by accused V. This country made pistol had been used to fire the bullet to kill the deceased. The appeal was dismissed and the conviction upheld.\textsuperscript{102}


\textsuperscript{101} Sushil Sharma v. State (2014) 4 SCC 317

Present appeal was filed against order whereby appellants were convicted under sections 148, 149, 302, 307 and 324 of IPC. Held, there was no denial from the side of the accused regarding incident and pendency of criminal case which was outcome of rivalry. Moreover testimonies were duly corroborated with medical evidence that cause of death was due to shock haemorrhage due to injuries received from fire arm in his chest and also injuries on his head. First appellant Kehar Singh was not shown to be armed with any weapon. He was said to be empty handed and exhorted his co-accused not to allow complainant party to go scot free. Second appellant was said to be armed at time of occurrence but no specific injury was attributed to him. Sixth appellant was also said to be armed but in FIR lodged at instance of complainant, no specific role was assigned to him. Therefore, first, second and sixth appellant should be acquitted and conviction was maintainable against rest of appellants. The testimonies of the two eye witnesses have also been corroborated by PW15 L.S. Yadav, Senior Scientific Officer (Ballistics), who after examining the.12 bore DBBL gun concluded that it was a fire arm and its firing mechanism was in working order. He also testified that two .12 bore empty cartridges which the IO had recovered from the spot, had been fired from left and right barrels of the aforementioned DBBL gun and not from any other fire arm. He also stated that there were holes in shirt and banian, which was of the deceased and caused by pellet projectiles and so also on the tehmad and kachha belonging to Raghbir Singh-injured. One deformed mutilated lead pellet taken out from the dead body of Dharam Singh was found to be fired lead pellet of size-I. Appeal was disposed of maintaining conviction of the other appellants.103

The present appeal was filed against order whereby appellants were convicted for offence punishable under sections 149 and 302 of the Indian Penal Code. Prosecution had established beyond reasonable doubt complete chain of events which pointed towards the guilt of the accused. Accused No. 4 and 7 disclosed names of their co-accused at whose instance various incriminating materials including pistol, cartridges, bullets, and blood stained articles were recovered. Confession made by accused was not basis for courts below to convict accused but it was used as a source of information to put criminal law into motion. Accused, could not take shelter under section 25 of the Evidence Act. Motive behind brutal murder of deceased as brought forward, by prosecution was trustworthy in light of material available on record. Merely because all bullets fired from gun did not hit target and were not recovered from scene of offence, was no ground to conclude that incident did not take place. Nexus between accused as well as their participation in crime is well established beyond reasonable doubt and nothing was suggested that accused was unnecessarily implicated by police. Entire evidence brought by prosecution was convincing and trustworthy. Therefore, impugned order of conviction was upheld and appeal was dismissed\textsuperscript{104}.


The trial court acquitted the accused from charges under section \textbf{302} and \textbf{378 IPC}. Hence this appeal had been preferred by the State in the High Court. A dead body was recovered by the police on information which had been conveyed that a person had been shot. The police recovered six empty cartridges along with one bullet and other articles from the spot. PW18, Senior Scientific Officer (Ballistics) proved his report Ex.PW18/A and opined that two bullets exhibited 'EB2' and 'EB3' recovered by the doctor while undressing the pant of the deceased. Ballistic Expert Ex.PW18/A in his report stated that bullets 'EB1' and 'EB2' were fired from the firearm country made

\textsuperscript{104} Pawan Kumar and Ors. v. State of Uttar Pradesh and Ors. (11.03.2015) MANU/SC/0421/2015
pistol 'F1' but because of insufficiency of characteristic of striation present on the bullet mark 'EB3' & 'EB4', it cannot be opined that those were discharged from the country made pistol 'F1'. The report further revealed that the empty cartridges 'EC1' to 'EC6' which were seized from the spot as alleged by the prosecution, had been fired from the country made pistol 'F1'. As per the version of PW14 Dr. strangely enough two fired bullets were found in the pant pockets of the deceased and the prosecution has failed to explain how and why the fired bullets were in the pant of the deceased and the bullets recovered from the pant of the deceased has been identified as fired from pistol 'F1'. These unanswered questions cast a doubt in the story of the prosecution and strengthen the possibility of false implication of the respondent. The other recoveries from the possession of the respondent were also doubtful. In light of the facts and circumstances the appeal of the State was dismissed and acquittal was upheld.105

100. Uma Shankar v. State (12.03.2015 – ALLHC) MANU/UP/0111/2015

The appellant was convicted under section 302 IPC. The medical evidence, ballistic report corroborated the testimonies of the eye witnesses. The prosecution was able to prove its case beyond reasonable doubt. The appeal of the appellant was dismissed and the conviction under section 302 upheld.106

4.4 TABLE OF CRIMINAL CASES IN WHICH BALLISTIC EVIDENCE WAS USED/REFERRED FOR RECORDING CONVICTION OR ACQUITTAL

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<td>29.</td>
<td>Nirmal Singh &amp; Another v. State of Bihar (2005) 9 SCC 725</td>
<td>302 IPC section 27 of Arms Act</td>
<td>According to medical report bullet injuries was sustained by the deceased. Forensic expert was not examined by the prosecution</td>
<td>Conviction</td>
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<td>31.</td>
<td>State of M.P. v. Paltan Mallah (2005) 3 SCC 169</td>
<td>302 IPC</td>
<td>The Supreme Court was of the opinion that convincing reasons were given by the ballistic expert in support of his opinion about identifiable marks appearing on pellet</td>
<td>Conviction</td>
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<td>32.</td>
<td>State of Sikkim v. Milan Kumar Diyali &amp; Anr. (09.08.2005 – SIHC)</td>
<td>302/201/34 IPC</td>
<td>The ballistic expert examined the gun and found it was a hand gun and was a</td>
<td>Conviction</td>
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<td>Case</td>
<td>Details</td>
<td>Statute(s)</td>
<td>Findings</td>
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<td>33.</td>
<td>Abdul Majid v. State (Govt. of NCT) (30.08.2006 – DELHC)</td>
<td>307 IPC</td>
<td>The ballistic report was collected and it corroborated testimony of the victim</td>
<td>Conviction</td>
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<td>34.</td>
<td>Hori Lal &amp; Another v. State of U.P. (2006) 13 SCC 79</td>
<td>302/149 IPC</td>
<td>Medical evidence supported the prosecution case that death of two persons were caused by gunshot injuries</td>
<td>Conviction</td>
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<td>35.</td>
<td>Sada Ram v. State of Haryana (2006) 13 SCC 528</td>
<td>302, 307 IPC 27 of the Arms Act</td>
<td>The medical evidence on record established beyond doubt the deceased and PW2 received the gunshot injuries</td>
<td>Conviction</td>
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<td>36.</td>
<td>Sivakumar v State (2006) 1 SCC 714</td>
<td>304 Part II IPC</td>
<td>Ballistics was used to examine the recovered air gun. Autopsy also revealed that injury must have been</td>
<td>Conviction</td>
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<td>No.</td>
<td>Case Summary</td>
<td>Statute</td>
<td>Description</td>
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<td>37.</td>
<td>Jasbir Singh v. State (Govt. of NCT of Delhi) (29.10.2007 – DELHC) (MANU/DE/9065/2007)</td>
<td>302 IPC</td>
<td>Although the ballistic expert was examined but none of the evidences corroborated prosecution case</td>
<td>Acquittal</td>
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<td>38.</td>
<td>Santosh Kumar Srivastava and Ors. v. State (22.05.2007 – ALLHC) MANU/UP/2218/2007</td>
<td>302/34 of IPC</td>
<td>Oral testimony was fully supported by medical evidence and ballistic report.</td>
<td>Conviction</td>
<td></td>
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<td>39.</td>
<td>Sarvesh Narain Shukla v. Daroga Singh &amp; Others (2007) 13 SCC 360</td>
<td>302/149 IPC</td>
<td>The doctor stated that the shots had been fired from a distance of a foot or two which was relied by the court</td>
<td>Conviction</td>
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<td>40.</td>
<td>State of Haryana v. Suraj Mal &amp; Ors. (22.05.2007 – PHHC) MANU/PH/0474/2007</td>
<td>302, 34, 325 IPC 27 Arms Act</td>
<td>Version of the eyewitnesses were corroborated with medical evidence</td>
<td>Conviction</td>
<td></td>
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<td>41.</td>
<td>Umar Mohammad &amp; Ors v. State of Rajasthan (2007) 14 SCC 711</td>
<td>302/149, 323/149, 148 IPC</td>
<td>Gunshot injuries were the cause of two persons death and the sufferance by M. Oral testimonies of the eyewitnesses got corroborated by the</td>
<td>Conviction</td>
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<td>No.</td>
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<td>Statute</td>
<td>Reason for Conviction/Acquittal</td>
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<td>42.</td>
<td>Vineet Kumar Chauhan v. State of Uttar Pradesh (2007) 14 SCC 660</td>
<td>304(ii) IPC</td>
<td>Having regard to the ocular evidence adduced by the prosecution, there was no reason to discard the prosecution theory that the injury as a result whereof the deceased suffered complete paralysis of both the lower limbs, etc. was caused by a bullet fired from a revolver.</td>
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<td>43.</td>
<td>Ghurey Lal v. State of U.P. (2008) 10 SCC 450</td>
<td>302, 323 and 307 of IPC</td>
<td>The ballistic expert opined that injuries of the deceased were possible by gun. Injuries on PW2 were possible by another fire. But the prosecution version was contradictory to the ballistic expert report and medical report.</td>
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<td>44.</td>
<td>Puran Singh v. State of Uttarakhand (2008) 3 SCC 795</td>
<td>302 IPC</td>
<td>It was clear from the ballistic expert’s opinion that cartridge EC1 was</td>
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<td>Section(s) of IPC</td>
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<td>45.</td>
<td>Gajraj v. State (18.03.2009 – DELHC) MANU/DE/1074/2009</td>
<td>302, 380, 404, 452 IPC</td>
<td>The bullets examined by FSL were ones which were recovered from body of the deceased</td>
<td>Conviction</td>
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<td>46.</td>
<td>Mahendra Pratap Singh v. State of Uttar Pradesh (2009) 11 SCC 334</td>
<td>302, 326 IPC</td>
<td>The evidences of eyewitnesses were in conflict and contradiction with medical evidence and ballistic expert’s report</td>
<td>Acquittal</td>
<td></td>
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<td>47.</td>
<td>State of Punjab v. Gurlabh Singh (2009) 13 SCC 556</td>
<td>300 Cl. Thirdly IPC</td>
<td>The doctors reported that injury 1 was caused by a firearm and injury 2 was a result of a blunt weapon</td>
<td>Conviction</td>
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<td>48.</td>
<td>State of Punjab v. Rajinder Singh (2009) 15 SCC 612</td>
<td>302 IPC  27 Arms Act, 1959</td>
<td>The court was of the view that as the eyewitnesses account does not support the medical evidence and vice-versa, there were some serious doubt in cast in the prosecution story</td>
<td>Acquittal</td>
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<td>Case Details</td>
<td>Reference</td>
<td>Summary of Key Findings</td>
<td>Verdict</td>
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<td>49.</td>
<td>Sultan Ganai v. State (11.05.2009 – JKH/C) MANU/JK/0116/2009</td>
<td>302 Ranbir Penal Code, 1989</td>
<td>The deceased died on spot as a result of bullet injuries. Reference was made to ballistic expert</td>
<td>Conviction</td>
<td></td>
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<td>50.</td>
<td>Arvind Kumar v. The State (N.C.T. of Delhi) (02.07.2010 – DELHC) MANU/DE/4281/2010</td>
<td>302 IPC</td>
<td>From the report of the ballistic expert the court came to the conclusion that the entangling of the chain of the firearm during alleged scuffle between the accused and deceased could not lead to make the gun fire accidentally</td>
<td>Conviction</td>
<td></td>
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<td>52.</td>
<td>Chattar Pal Singh v. State (02.02.2010 – DELHC) MANU/DE/0292/2010</td>
<td>302 IPC</td>
<td>The ballistic expert reported that the country made pistol had an 8mm bore and the bullet recovered from the body of the deceased correspond to 8mm cartridge</td>
<td>Conviction</td>
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<td>53.</td>
<td>Hari Singh And</td>
<td>302/34 IPC</td>
<td>Post-mortem report</td>
<td>Conviction</td>
<td></td>
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<td>Another State of Uttar Pradesh (2010) 13 SCC 756</td>
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<td>revealed one wound of entry about 3cm x 2.5 cm with blackening and charring and recovered 160 pellets and three wads from inside the dead body</td>
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<td>55. Jessica Lal Case Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1</td>
<td>302, 201/120B of IPC 27 Arms Act, 1959</td>
<td>Three ballistics expert had concurred that empty cartridges had been fired from two different weapons</td>
<td>Conviction</td>
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<td>56. Lallan Chaubey v State of U.P. (2010) 14 SCC 592</td>
<td>302 IPC</td>
<td>Medical evidence proved that gun shot injury was the cause of death of the deceased and there was no inconsistency between the medical evidence and ocular evidence</td>
<td>Conviction</td>
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<td>57. Mohd. Farooq Abdul Gafur And Another v. State of Maharashtra (2010) 14 SCC 641</td>
<td>3(2) of Maharashtra Control Of Organised Crime</td>
<td>The report of the ballistic expert established and proved that weapon</td>
<td>Conviction</td>
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<td>Section(s) of IPC</td>
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<td>58.</td>
<td>Santokh Singh And Another v. State of Punjab (2010) 8 SCC 784</td>
<td>302/34 IPC</td>
<td>The report of the FSL indicated that the pistol recovered from the site of the incident was found to be in working condition</td>
<td>Conviction</td>
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<td>60.</td>
<td>Ashish Kumar @ Lambu v. State (02.08.2011 – DELHC) MANU/DE/3212/2011</td>
<td>394/398/34 IPC 27 of Arms Act</td>
<td>The ballistic expert opined that the empty cartridge were fired from the country made pistol which was used to commit the offence</td>
<td>Acquittal as appellant was juvenile at the time of commission of offence</td>
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<td>61.</td>
<td>Gurjinder Singh v State</td>
<td>302 IPC</td>
<td>As per the ballistic</td>
<td>Conviction</td>
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<td>Case No.</td>
<td>Case Details</td>
<td>Statute(s)</td>
<td>Key Evidence</td>
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<td>62.</td>
<td>Inderjit alias Jitu v. State of Himachal Pradesh (23.06.2011 – HPHC) MANU/HP/1366/2011</td>
<td>326 IPC</td>
<td>The gun and the recovered material were sent for ballistic expert for his opinion and the report of the ballistic expert was obtained</td>
<td>Conviction</td>
<td></td>
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<td>63.</td>
<td>Manjit Singh v CBI (2011) 11 SCC 578</td>
<td>302/34, 302/120B IPC 19 TADA Act</td>
<td>The medical evidence ascertained the cause of death as ante-mortem head injuries caused by bullets. The ballistic expert opined that the 3 empty cartridges that were recovered were fired from the 9mm pistol</td>
<td>Conviction</td>
<td></td>
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<td>64.</td>
<td>Manjuviranna Kantayya Rai v. The State of Maharashtra (07.07.2011 – BOMHC) MANU/MH/0853/2011</td>
<td>302, 307, 120B 34 IPC</td>
<td>The evidence of PW2 and PW6 were trustworthy and corroborated by the ballistic expert</td>
<td>Conviction</td>
<td></td>
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<td>65.</td>
<td>Mohandas Naik v. State (05.05.2011 – BOMHC) MANU/MH/0627/2011</td>
<td>304 (II), 506, 3 IPC 25(1B)(a) Arms</td>
<td>All the material evidences corroborated each</td>
<td>Conviction</td>
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<td>Case Description</td>
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<td>66.</td>
<td>Mohd. Pervez Abdul Kayuum Shaikh and Ors. v. State of Gujrat and Anr. (29.08.2011) MANU/GJ/0892/2011</td>
<td>307/120B IPC section 4/3[2][b] of POTA and section 25[1-B][a] and section 27[1] of Arms Act 3[3] of POTA</td>
<td>Medical and ballistic evidence could, by no stretch, square with ocular evidence which was very weak and fragile as such conviction was altered under other sections</td>
<td>Conviction</td>
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<td>67.</td>
<td>Prakash Chand and Others. V. State of H.P. (19.07.2011 – HPHC) MANU/HP/1426/2011</td>
<td>399 and 402 of IPC and section 25 of Arms Act.</td>
<td>Although recoveries were effected and examined by ballistic expert, it was doubtful</td>
<td>Acquittal</td>
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<td>68.</td>
<td>Red Fort Attack Case: Mohd. Arif Alias Ashfaq v. State (NCT of Delhi) (2011) 13 SCC 621</td>
<td>121, 121A, 120B and 302 of IPC</td>
<td>Searches lead to the recovery of large quantities of arms and ammunitions. Rifle was hidden in thick bushes behind red fort</td>
<td>Conviction</td>
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<td>69.</td>
<td>Sapna Talwar and Anr. v. State (12.10.2011 – DELHC) MANU/DE/3999/2011</td>
<td>120(B), 201, 302 IPC</td>
<td>As per the ballistic expert’s report the pistol which was recovered from appellant Y was not in working condition</td>
<td>Conviction</td>
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<td>70.</td>
<td>Satyavir Singh Rathi, ACP v. State (2011) 6 SCC 1</td>
<td>302, 307, 34 IPC</td>
<td>Ballistics were used to notify the origin and directions of the firing of the bullet</td>
<td>Conviction</td>
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<td>Case Details</td>
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<td>Key Evidence</td>
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<td>71.</td>
<td>Sheo Shankar Singh v. State of Jharkhand &amp; Another (2011) 3 SCC 654</td>
<td>302/34, 27 of the Arms Act, 1959</td>
<td>The depositions of the doctor left no doubt that the death of the deceased was the result of two ante-mortem gunshot wounds</td>
<td>Conviction</td>
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<td>72.</td>
<td>State of Rajasthan v. Arjun Singh &amp; Others (2011) 9 SCC 115</td>
<td>302/34, 307/34 IPC</td>
<td>The medical evidence revealed that gunshot injuries were the cause of death of two persons which also tallied with the version of PW2</td>
<td>Conviction</td>
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<td>73.</td>
<td>State of Uttar Pradesh v. Naresh And Others (2011) 4 SCC 324</td>
<td>302/34, 307/34, 379/37 IPC</td>
<td>According to the medical report the cause of death was firearm injury</td>
<td>Conviction</td>
<td></td>
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<td>74.</td>
<td>Virender Yadav v. State of Delhi (13.09.2011 – DELHC) MANU/DE/3573/2011</td>
<td>392 IPC</td>
<td>Although, the prosecution lead evidence of recovery of one pistol and one live cartridge which was sent to the ballistic expert but said recovery of weapon was totally doubtful, therefore, ingredients of section 397 IPC was missing in the case</td>
<td>Conviction</td>
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<td>75.</td>
<td>Firoz Abdul Latif</td>
<td>5 of Explosive</td>
<td>The ballistic expert</td>
<td>Conviction</td>
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<td>Case</td>
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<td>Ghaswala &amp; Anr. v. State Govt. of NCT of Delhi (03.09.2012 – DELHC)</td>
<td>Substance Act, 1908 read with sections 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 and section 120B IPC</td>
<td>opined that two 7.62 mm/AK 56 Assault rifles marked W1 and W2 were firearms as defined in Arms Act and were in working order and these were used and fired</td>
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<td>76. Kandan @ Viral Kandan v. State (22.11.2012 – MADHC)</td>
<td>25(1-B)(a) of the Arms Act, 302 IPC</td>
<td>The ballistic expert opined that the country made gun had been used and bullet which was found in body of the deceased had been shot only from that weapon</td>
<td>Conviction</td>
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<td>77. Md. Moinul Haque v. The State of Assam (06.06.2012 – GUHC)</td>
<td>25(1)(a) of the Arms Act, 1959</td>
<td>Scientific expert tested gun on firing but it was not stated so in his report</td>
<td>Acquittal</td>
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<td>78. Ram Singh v State of Rajasthan (2012) 12 SCC 339</td>
<td>147/148/149/341/307/302 read with section 49 of IPC</td>
<td>Gunshot resulted in the death of the victim R. Although according to the prosecution witness four shots were fired in the course of the incident, only one empty cartridge was recovered from the</td>
<td>Conviction</td>
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<td>Case Number</td>
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<td>80.</td>
<td>Gopal Singh v. State of Uttarkhand (2013) 7 SCC 545</td>
<td>324 IPC</td>
<td>From the medical evidence it was clear that the injury was caused by firearm</td>
<td>Conviction</td>
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<td>81.</td>
<td>Manjit Singh &amp; Another v. State of Punjab &amp; Another (2013) 12 SCC 746</td>
<td>302, 307, 34 IPC</td>
<td>The FSL report stated with clarity that one cartridge was fired from left barrel of the DBBL gun and three cartridges were fired from rifle</td>
<td>Conviction</td>
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<td>82.</td>
<td>Ram Dass v. State (08.04.2013 – DELHC) MANU/DE/1059/2013</td>
<td>302, 323 of IPC</td>
<td>The microscopic examination of the test fired cartridges revealed that they were fired from the same country made pistol which was seized from the appellant</td>
<td>Conviction</td>
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<td>83.</td>
<td>Sanjay Dutt v. State of Maharashtra (2013) 13 SCC 1</td>
<td>3, 7, 25(1-A), 25(1-B)(a) Arms Act, 1959</td>
<td>The rod and the spring recovered from the possession of the co-accused were sent to FSL for</td>
<td>Conviction</td>
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<td>Case Details</td>
<td>Relevant Statutes</td>
<td>Summary of Evidence</td>
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<td>84.</td>
<td>State of Himachal Pradesh v. Suresh Kumar (27.06.2013 – HPHC) MANU/HP/0383/2013</td>
<td>302 IPC, 27 of Arms Act</td>
<td>The ballistic expert reported was available but credence was not given to it as the prosecution failed to prove that the crime cartridge has been recovered from the accused as alleged</td>
<td>Acquittal</td>
<td></td>
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<td>85.</td>
<td>Sunil Rathi and Ors. v. State of Uttarakhand (09.10.2013 – UCHC) MANU/UC/0319/2013</td>
<td>302, 120B IPC, 25 of Arms Act</td>
<td>Though the report of FSL could not be marked as an exhibit, but it was admissible in the evidence as the same had been forwarded by the Junior Scientific Officer (Ballistics) of the laboratory and was available on record.</td>
<td>Conviction</td>
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<td>86.</td>
<td>Vijay Kumar Shukla v.</td>
<td>302/186/34 IPC,</td>
<td>The report of the</td>
<td>Conviction</td>
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<td>No.</td>
<td>Case Details</td>
<td>Relevant Laws</td>
<td>Summary of Facts</td>
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<td>87.</td>
<td>Amit v. State (23.12.2014 – DELHC)</td>
<td>Section 25 of the Arms Act, 1959, sections 307/34 and 120B of IPC</td>
<td>The ballistic report showed that the round recovered from the spot were fired from the pistol</td>
<td>Conviction</td>
<td></td>
</tr>
<tr>
<td>88.</td>
<td>Bastiram v. State of Rajasthan (2014) 5 SCC 398</td>
<td>302, 307, 34 IPC</td>
<td>According to the post-mortem and evidence of the doctor no firearm injury was found in the body of the deceased but appellants were armed with pistols and they had fired at the victims with the intention of killing them</td>
<td>Conviction</td>
<td></td>
</tr>
<tr>
<td>89.</td>
<td>Joginder Singh v State of Haryana (2014) 11 SCC 335</td>
<td>302, 307 read with section 34 of IPC 25, 27 of the Arms Act</td>
<td>The ballistic expert opined 12 bore fired cartridge case were fired from a firearm</td>
<td>Acquittal</td>
<td></td>
</tr>
<tr>
<td>Case</td>
<td>Applicant</td>
<td>Defendant</td>
<td>Legal basis</td>
<td>Police evidence</td>
<td>Criminal charges</td>
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<tr>
<td>90.</td>
<td>Mahendra Singh v. State of U.P.</td>
<td>302/34 307/34 IPC</td>
<td>but not from DBBL gun which was seized from the custody of the accused</td>
<td>Medical evidence and ballistic report fully supported prosecution case</td>
<td>Conviction</td>
</tr>
<tr>
<td>91.</td>
<td>Mariya Anton Vijay v. State</td>
<td>25(1B)(a) Arms Act, 2(m)(5) of Motor Spirit and High Speed Diesel Order, 1990</td>
<td>The seized arms were sent to the ballistic expert and he certified that they were prohibited arms as classified by the Arms Act, 1959</td>
<td>Conviction</td>
<td></td>
</tr>
<tr>
<td>92.</td>
<td>M. B. Suresh v State of Karnataka</td>
<td>307, 114, 427, 3 IPC read with sections 25, 27 Arms Act IPC</td>
<td>The doctor PW10 found nine injuries on the person of the deceased</td>
<td>Conviction</td>
<td></td>
</tr>
<tr>
<td>93.</td>
<td>Sandeep Chaudhary v. State</td>
<td>39 Arms Act, 307, 353 IPC</td>
<td>The country made pistol and cartridge which were seized from the appellant were examined by the ballistic expert who confirmed that they were firearms and ammunitions under the Arms Act</td>
<td>Conviction</td>
<td></td>
</tr>
<tr>
<td>94.</td>
<td>Satpal Singh v. State</td>
<td>302/120-B, 201 IPC</td>
<td>Ballistic expert examined the cartridges which</td>
<td>Conviction</td>
<td></td>
</tr>
<tr>
<td>Case</td>
<td>Description</td>
<td>Legal Reference</td>
<td>Summary</td>
<td>Outcome</td>
<td></td>
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</tr>
<tr>
<td>95.</td>
<td>Sushil Sharma v. State (2014) 4 SCC 317</td>
<td>302, 120B read with section 201 IPC</td>
<td>Were recovered and used to commit offence. The report corroborated the prosecution case.</td>
<td>Conviction</td>
<td></td>
</tr>
<tr>
<td>96.</td>
<td>Vijay Pal v. State of Delhi (30.07.2014 – DELHC) MANU/DE/1774/2014</td>
<td>302 IPC</td>
<td>Medical evidence established that death was caused by bullet injury in head and neck of deceased. CFSL report established that bullets recovered from flat and skull of deceased were fired from A-1’s revolver.</td>
<td>Conviction</td>
<td></td>
</tr>
<tr>
<td>97.</td>
<td>Kehar Singh and Ors. v. State of Haryana and</td>
<td>148, 149, 302, 307, 324 IPC</td>
<td>FSL report proved beyond doubt that the bullet found in the body of the deceased was fired from the pistol which was recovered pursuant to the disclosure statement made by accused V. This country made pistol had been used to fire the bullet to kill the deceased.</td>
<td>Conviction</td>
<td></td>
</tr>
<tr>
<td>98.</td>
<td>Pawan Kumar and Ors. v. State of Uttar Pradesh and Ors. (11.03.2015)</td>
<td>149 and 302 of the IPC</td>
<td>Various incriminating materials including pistol, cartridges, bullets were recovered at the instance of the co-accused, prosecution proved its case beyond doubt</td>
<td>Conviction</td>
<td></td>
</tr>
<tr>
<td>99.</td>
<td>State v. Vinod Kumar Yadav (19.05.2015 – DELHC)</td>
<td>302, 378 IPC</td>
<td>Ballistic Expert Ex.PW18/A in his report stated that bullets 'EB1' and 'EB2' were fired from the firearm country made pistol 'F1' but because of insufficiency of characteristic of striation present on the bullet mark 'EB3' &amp; 'EB4', it</td>
<td>Acquittal</td>
<td></td>
</tr>
</tbody>
</table>
cannot be opined that those were discharged from the country made pistol 'F1'

100. Uma Shankar v. State (12.03.2015 – ALLHC) MANU/UP/0111/2015 302 IPC The medical evidence, ballistic report corroborated the testimonies of the eye witnesses Conviction

4.5 CRITICAL ANALYSIS OF THE CASES IN WHICH BALLISTIC EVIDENCE WAS USED TO RECORD CONVICTION AND ACQUITTAL

In the category where Ballistic evidence was used to record conviction and acquittal, out of 100 cases studied and referred from 1995 to 2015 (21 years) under this chapter in 82 cases conviction was recorded and in 18 cases acquittal was recorded.

4.5.1 Reasons For Acquittal

A minute study of cases under this category reveals that in cases where injuries are caused by firearms and empty cartridges were recovered from the spot and pistol and cartridges were seized from the accused but the prosecution failed to send the empty cartridges recovered and the seized pistol to the ballistic expert, acquittal was recorded. The court opined that failure to produce the expert opinion before the trial court in such cases affects the creditworthiness of the prosecution case to a great extent.\textsuperscript{107} (Materials not sent to ballistic expert). In the other matter acquittal was recorded as the FSL failed to predict with any scientific accuracy as the time when the gun was last fired. In the case in hand, gun belonging to accused had fired at some point of time but that point of time could not with any exactitude, be related to time of incident. It was common that fire arm barrels was not cleaned after every discharge and may be that

gun had fired long before its seizure from accused. There was no evidence as prosecution witness had not supported prosecution case, to show that accused had fired gun. No corroboration was available even from seizure of gun from accused as he had a valid licence. Even statement made by the deceased in the dying declaration did not corroborate the involvement of the accused in the case. Therefore conviction was set aside and accused was acquitted of charge.\(^{108}\) (FSL failed to predict the time when gun was last fired, Prosecution witness did not support the prosecution case, Dying declaration did not corroborate the accused the involvement of the accused in the case) In another case, due to contradiction of the deposition of the doctor and the prosecution, case the case of the prosecution was controversial. Although the guns and empties recovered were sent for analysis to the ballistic expert, and they were reported to be in working condition but it was of no use as it did not corroborate the prosecution case. The motive on the part of the accused to kill the deceased could not be proved. Hence, acquittal was recorded\(^{109}\). (Contradiction between deposition of doctor and the prosecution case, although recoveries were sent to ballistic, but it was of no use) Acquittal has also been recorded when, both the ballistic expert’s and the medical evidence corroborated each other but both the evidence did not support the prosecution case. Hence acquittal was recorded\(^{110}\). (Therefore, it can be said that forensic evidence can also lead to acquittal) In a certain case, acquittal was recorded, as the Supreme Court was of the view that it is not safe to place reliance on the report of the ballistic expert because it was an admitted fact that the empties which were sent to the ballistic expert after six months were not sealed at the time of seizure. (Therefore compliance with the quality control should be maintained.) In this case, the identity of the empties seized from the place of incident and those tested by expert could not be safely tallied\(^{111}\). If none of the evidences corroborate, it lead to acquittal although the ballistic expert was examined\(^{112}\). If the prosecution version is contradictory to the


\(^{110}\) State by Aldur Police v. B. C. Parmaneshwarappa (07.06.1999) MANU/KA/0359/1999


ballistic expert’s report and medical report acquittal was recorded. When it was clear from the report of the ballistic expert and the medical evidence that the cartridge in question was not fired from the single barreled 12 bore rifle said to have been used by the accused, acquittal was recorded. When the evidence of the eyewitnesses were in contradiction with medical evidence and ballistic expert’s report, the accused was acquitted. For the same reason in many cases the accused was acquitted. In a unique case, although the ballistic report was in conformity of the prosecution case, but the accused being juvenile at the time of commission of the crime was acquitted.

When, the existence of conspiracy could not be established, the recoveries which were examined by ballistic expert become doubtful. Sometimes on the sole basis of the ballistic expert’s report, even an accused was acquitted. When according to the ballistic expert’s report the pistol which was recovered from the appellant was not in a working condition, the accused was acquitted. (For conviction on the basis of the forensic evidence, corroboration is required but for acquittal it might not require, means when there is no other evidence to convict accused, acquittal may be recorded on the basis of the ballistic expert’s report, maintaining the principle for conviction, proof beyond reasonable doubt is required.) Independent witness should be called by police at the time of search and seizure. After the seizure is made proper care proper care should be taken to keep the seized arms under safe custody in sealed cover even when it is dispatched and ultimately produced before the court. Moreover, if ballistic expert has tested the firearm, it should be mentioned in the report, which was not done in this case. It inspite of the availability of the ballistics expert’s report, if the prosecution fails to prove, that the crime cartridge was recovered from the accused as alleged, and it could not be linked with the gun in question, the evidence of the expert would be considered as discrepant and not worthy of any credit. If the ballistic expert reports that the cartridge cases recovered does not match with the weapon that was

117 Ashish Kumar @ Lambu v. State (02.08.2011 – DELHC) MANU/DE/3212/2011
120 Md. Moinul Haque v. The State of Assam (06.06.2012 – GUHC)MANU/GH/0350/2012
121 State of Himachal Pradesh v. Suresh Kumar (27.06.2013 – HPHC) MANU/HP/0383/2013
seized from the custody of the accused, on the basis of such report of the ballistic expert, acquittal was granted to the accused\textsuperscript{122}. If there is insufficiency of the materials available to the ballistic expert as it happened that due to insufficiency of characteristics of striation present on the bullet mark, it could not be opined by the ballistic expert from which weapon they were discharged\textsuperscript{123}.

In one case acquittal was given although court relied on the opinion of the ballistic expert, since the appellant was a juvenile.\textsuperscript{124} In \textit{Gajadhar Soni v. State of M.P.}\textsuperscript{125} as the ballistic expert failed to point out the time with exactitude when the gun belonging to the accused had been fired acquittal was recorded. In \textit{Ghurey Lal v. State of U.P.}, acquittal was awarded to the accused as the prosecution version was contradictory to the ballistic expert report and medical report.\textsuperscript{126} In Jasbir Singh v. State (Govt. of NCT of Delhi), although the ballistic expert was examined but none of the evidences corroborated prosecution case, hence acquittal was given.\textsuperscript{127} In Joginder Singh v. State of Haryana, the recovery of the DBBL gun from the accused was contradictory to the opinion of the expert.\textsuperscript{128} In Mahendra Pratap Singh’s case, the evidences of the eyewitnesses were in conflict and contradiction with medical evidence and ballistic expert’s report.\textsuperscript{129} In Manoj Kumar’s case, the alleged weapon recovered from the possession of the appellant was neither sent to ballistic expert nor tested by the police personnel himself. Failure of the expert to mention the fact properly in the report resulted in acquittal.\textsuperscript{130} Sometimes prosecution case remained uncorroborated and conflicted, therefore could not be supported by the views of ballistic expert.\textsuperscript{131} Due to doubt in the minds of the court sometimes acquittal was recorded.\textsuperscript{132} Sometimes since the empties which were sent to the ballistic expert were not sealed properly acquittal was recorded.

\textsuperscript{122} Joginder Singh v. State of Haryana (2014) 11 SCC 335
\textsuperscript{123} State v. Vinod Kumar Yadav (19.05.2015 – DELHC)MANU/DE/1763/2015
\textsuperscript{124} Ashish Kumar @ Lambu v. State (02.08.2011 – DELHC) MANU/DE/3212/2011
\textsuperscript{127} Supra at 6
\textsuperscript{129} Mahendra Pratap Singh v. State of Uttar Pradesh (2009) 11 SCC 334
\textsuperscript{130} Md. Moinul Haque v. The State of Assam (06.06.2012 – GUHC) MANU/GH/0350/2012
\textsuperscript{132} State by Aldur Police v. B.C. Parameshwarappa (07.06.1999) MANU/KA/0359/1999
4.5.2 Reasons For Conviction

While researching on the chapter of ballistics, the trend of the cases relating to ballistics and how the courts interpreted such cases are studied in detail. Apparently, from the term Ballistic, what strikes our mind is that in cases relating to firearms, the involvement of the Ballistic expert is essential, but this concept has been swayed away by the Supreme Court. While deciding the case of *Prem Kumar And Another v. State of Bihar*\(^{133}\), the Supreme Court referred to the case of *Mohinder Singh v. State* and laid its opinion. In the case of Prem Kumar, the plea of the appellant’s counsel was that the cartridges recovered were not sent to the ballistic expert nor was any ballistic expert examined, the court in this respect invited the decision of the Supreme Court in *Mohinder Singh v. State* and referred particularly to the observation of the court in this respect. The court opined that the observation which was forwarded in the above mentioned case is applicable where the weapon with which the victim sustained injuries was before the Court and there was doubt whether the injuries could have been caused by using that weapon. Whereas, in this case, the rifles used by A-1 and A-2 were never recovered. So, the prosecution could not, in the circumstances, allege that a particular identifiable weapon was used in committing the crime. In this case there was nothing to be examined by the ballistic expert. Therefore the observations in *Mohinder Singh v. State*\(^{134}\) should be understood in the above peculiar context. There was no merit in the plea of the appellant’s counsel. On the other hand in the case of *Sukhwant Singh v. State of Punjab*, the Supreme Court categorically held that, in cases where the injuries are caused by firearms, the opinion of the ballistic expert is of a considerable importance where both the firearm and the cartridge were recovered during investigation to connect an accused with the crime\(^{135}\). Therefore, by the decision of *Sukhwant Singh* ballistic report is important if the investigation leads to a recovery of both the firearm and crime cartridge. In the field of Ballistics even possession of firearms is an offence. In the case of *Bilal Ahmed Kaloo*, the appellant was in possession of a revolver and two cartridges for which he was booked under sections 3(3), 4(3) and 5 of the TADA and also under section 25 of the Indian Arms Act. The

\(^{133}\) *Prem Kumar And Another v. State of Bihar* (1995) 3 SCC 228
\(^{134}\) *Mohinder Singh v. State* 1950 SCR 821: AIR 1953 SC 415
ballistic expert conducted scientific test on the articles and reported that the seized articles were in perfect working condition. Particulars of the weapon given in the seizure memo tallied with the weapon on examination by the ballistic expert. In cases where rifle was used for firing and the appellant took the plea of general exceptions, the court was of the view that primordial requirement of the said exception is that the act which killed the other person should have been done “with proper care and caution”. The very fact that the accused shot his own colleague at a close range without knowing the identity of his target smacks of utter dearth of any care and caution. Moreover, there is a condition for claiming the extended right of private defence only in case the property sought to be protected is a building. It should be a building used for human dwelling or for custody of property. If it is not a building of that type the person exercising the right of private defence cannot go to the farthest extent of killing another person unless the threatened mischief has caused a reasonable apprehension that death or grievous hurt would otherwise be the consequence. In this case there was no plea at all that the appellant had any apprehension of death or grievous hurt nor it was the case that the tower was either used for human dwelling or custody of property. It is reiterated by the court that when the recoveries were not sent to ballistic expert and the oral evidence were trustworthy and it is not contradictory to the medical evidence, there was no infirmity in the impugned judgment of the court below in granting conviction. Where firearm injuries were caused which resulted in the death and according to doctors injuries were individually sufficient to cause death, the Supreme Court was of the opinion that minor contradictions or inconsistencies are immaterial. Non-mention in seizure memo whether the cartridges seized by investigating officer from place of occurrence were wet or dry though it was raining at that time or non-mention in inquest report that dead body was covered with a cloth though PW had stated so, were minor omissions and cannot be a ground for discarding the prosecution case. Therefore only Medical evidence without ballistic evidence can prove a case. In the case of H.P. v. Mast Ram, the Supreme Court laid some observations regarding Ballistic Evidence. One of the views was that generally the fire range of gun differs

from gun to gun but it is not always true that the firing ranges of two different guns are different. Therefore, the court opined that it could not be said that the firing range of from DBML gun differed from SBML gun or vice versa. Secondly, the Supreme Court, confirmed that the report submitted under the hand of Government Scientific Expert comes within the purview of section 293(1) of CrPC. Thirdly, the Supreme Court confirmed that it is not the requirement of law that the pellets recovered from the body of the deceased be sent to ballistic expert to determine as to whether the pellets were fired from the exhibited gun or not. The court held on the contrary, the recovery of pellets from the body of the deceased clearly established the prosecution case that the deceased died of gunshot injuries Moreover, the court was of the view that the ocular testimony corroborated by the opinion of the doctor proved the prosecution case beyond reasonable doubt. Even on the basis of reliable testimony of rustic straightforward witness which is consistent with the medical evidence on record, conviction can be awarded, no recoveries were made from place of occurrence. In cases of Ballistic, if possession and recovery of the firearm is proved, ownership of the firearm need not be proved. In the Jessica Lal Case, court opined that an expert is only an expert if he would follow, the well accepted guidelines to arrive at a conclusion, which is supported with logical reasoning. It has been studied by the court that when a weapon is fired from a close range, normally gunpowder which comes along with the bullet makes dark burn marks around the wound. The reason is that when the weapon is fired from a close range, normally gun powder comes along with the bullet and makes dark burn marks around the wound. The court also opined that in cases of Ballistic evidence when ocular testimony receives clear corroboration from medical evidence and as well as from the report of the FSL, minor discrepancies are bound to occur and one cannot expect the witnesses to state with precision. Moreover, judicial evaluation of the evidence should be done by considering the totality of the facts and circumstances of the case and not on scrutiny in isolation and further the concept of proof beyond reasonable doubt cannot be made to appear totally

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143 Manu Sharma v. State ( NCT of Delhi) (2010) 6 SCC 1
144 Gurjinder Singh v. State of Punjab (2011) 3 SCC 530
unrealistic. Thus to effect conviction of the accused facts should be established cumulatively.\textsuperscript{145}

In the case of \textit{Bastiram v. State of Rajasthan}, although according to the post-mortem and evidence of the doctor, no firearm injury was found in the body of the deceased, the Supreme Court concluded that the ocular evidence undoubtedly showed that deceased R was fired by the appellant but in view of the unchallenged testimony of the doctor, it was quite clear that the gun shot did not hit deceased R and the cause of his death was the cumulative effect of the various sufferance by him. Thus the Supreme Court upheld the convictions of the appellants.\textsuperscript{146}

4.5.3 The Table On The Question Of Recording Conviction Or Acquittal Relating To Cases Where Ballistic Evidences Were Used Reveals The Following:

i. Out of 100 criminal cases in 82 cases conviction was recorded, which amounts to 82\%. In other words in 82\% criminal cases in which ballistic evidence were referred to, conviction was recorded.

ii. Out of 100 criminal cases in 18 cases acquittal was recorded, which amounts to 18\%. Therefore in 18\% criminal cases in which ballistic evidence was referred to, acquittal was recorded.

\textsuperscript{145} Manjit Singh & Another v. State of Punjab & Another (2013) 12 SCC 746
\textsuperscript{146} Bastiram v. State of Rajasthan (2014) 5 SCC 398