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MANJEET SINGH

v.

STATE OF HIMACHAL PRADESH
(Criminal Appeal No. 1695 of 2005)

APRIL 25, 2014

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[A.K. PATNAIK AND SUDHANSU JYOTI
MUKHOPADHAYA, JJ.]

Penal Code, 1860:

- C ss. 96 to 106 – *Things done in private defence* – Held: Under s.96, nothing is an offence, which is done in the exercise of the right of private defence — The extent and limitations of the right of private defence is prescribed u/s 96 to 106, IPC. Such a right can be exercised only to defend the unlawful action and not to retaliate — Neither the accused nor his two companions in the statements recorded u/s 313 Cr.P.C., have stated that the deceased and his companions were the aggressors and that the accused was acting in exercise of the right of private defence – There is nothing on the record to suggest that the accused or his companions received injuries at the hands of the deceased or the deceased tried to snatch the carbine of the accused – On the contrary, evidence of PWs supports prosecution case that it was the accused who was the aggressor and that he had not acted in private defence — Non-explanation of the injuries on the person of the accused and his two companions, which were found simple in nature, cannot be held to be fatal to the prosecution case.
- F ss.304 and 324 IPC r/w s.27 of Arms Act – *Culpable homicide not amounting to murder* – Death of victim caused by fire arms – Injuries to witnesses – Conviction by courts below u/s 302 – Held: Evidence produced against accused does not show that he had any motive to cause death of
- G ss.304 and 324 IPC r/w s.27 of Arms Act – *Culpable homicide not amounting to murder* – Death of victim caused by fire arms – Injuries to witnesses – Conviction by courts below u/s 302 – Held: Evidence produced against accused does not show that he had any motive to cause death of

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deceased or had intended to cause such bodily injuries which were sufficient in the ordinary course of nature to cause death of deceased — Evidence on record also does not establish that injuries caused on the body of deceased must in all probability cause his death or likely to cause his death — On the spur of moment, during the heat of exchange of words, accused caused injuries on the body of deceased which caused his death — Therefore, ingredients of murder as defined in s.300, IPC, have not been established against accused — He was guilty of culpable homicide not amounting to murder — Accordingly, accused-appellant convicted u/s 304 IPC and sentenced to 7 years imprisonment with fine — His conviction u/s 302 set aside — Conviction and sentence u/s 324 IPC and 27 of Arms Act, maintained.

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The appellant and two others were prosecuted for committing murder of one of the companions of the PWs and causing gunshot injuries to them. The trial court convicted the appellant u/s 302 and 324 IPC as also s. 27 of the Arms Act and sentenced him to various terms of imprisonment including life imprisonment u/s 302 IPC. The other two accused were acquitted by the trial court of all the charges. The High Court affirmed the conviction of the appellant and sentences imposed upon him by the trial court.

In the instant appeal it was contended for the appellant that he acted in exercise of the right of private defence.

Disposing of the appeal, the Court

HELD: 1.1. Under s.96 IPC, nothing is an offence which is done in the exercise of the right of private defence. The extent and limitations of the right of private defence is prescribed u/s 96 to 106, IPC. Such a right can be exercised only to defend the unlawful action and not to retaliate. [para 19] [807-C, 808-A]

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A *George Dominic Varkey v. The State of Kerala, (1971) 3 SCC 275; Moti Singh v. State of Maharashtra, (2002) 9 SCC 494* – referred to.

B 1.2. In the instant case, neither the accused nor his two companions in the statements recorded u/s 313 Cr.P.C., have stated that the deceased and his companions were the aggressors and that the accused was acting in exercise of the right of private defence. In fact, their case is that of total denial. There is nothing on the record to suggest that the accused or his companions received injuries at the hands of the deceased or the deceased tried to snatch the carbine of the accused. No evidence has been brought on record that the deceased and his companions entered the Hall of the Hotel with arms. During the course of cross-examination of the prosecution witnesses, especially PW.5, PW.6, PW.7, PW.9 and PW.12, an attempt has been made on behalf of the accused to set up the case of private defence. Evidence of eye-witnesses, especially of the injured, namely, PW.5, PW.6 and PW.7, which are trustworthy, when read together, non-explanation of the injuries on the person of the accused and his two companions, which were found simple in nature, cannot be held to be fatal to the prosecution case. PW.9, an independent witness, who was also staying and sleeping in the Hall where the occurrence took place, though was declared hostile, has admitted the correctness of the prosecution story. His statement lends support to the prosecution story to show that it was the accused who was the aggressor and that the accused had not acted in private defence. [para 18, 22, 24 and 25] [806-H; 807-A-B; 808-H; 809-A,E-G; 810-C-D]

Rajender singh and Ors. vs. State of Bihar 2000 (2) SCR 1073 = 2000 (4) SCC 298 – referred to.

H 2. However, the evidence produced against the accused does not show that he had any motive to cause

death of the deceased or had intended to cause such bodily injuries which were sufficient in the ordinary course of nature to cause the death of the deceased. Evidence on record also does not establish that the injuries caused on the body of the deceased must in all probability cause his death or likely to cause his death. On the spur of the moment, during the heat of exchange of words, the accused caused injuries on the body of the deceased which caused his death. Therefore, the ingredients of murder as defined in s.300, IPC, have not been established against the accused. The accused was guilty of culpable homicide not amounting to murder u/s 304, IPC. His conviction u/s 302, IPC is set aside. The accused-appellant is convicted u/s 304, IPC and considering the fact that he had no intention to either cause the death of the deceased or cause such bodily injury as is likely to cause death of the deceased, he is sentenced to seven years rigorous imprisonment and a fine of Rs.5,000/- . The conviction and sentences for the offences punishable u/s 324, IPC and s. 27 of the Arms Act as awarded by the trial court are affirmed. [para 26-27] [810-D-G; 811-A-C]

Case Law Reference:

(1971) 3 SCC 275	referred to	para 19	
(2002) 9 SCC 494	referred to	para 21	F
2000 (2) SCR 1073	referred to	para 22	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1695 of 2005.

From the Judgment & Order dated 18.10.2004 of the High Court of Judicature at Shimla in Criminal Appeal No. 259 of 2002.

Pramod Swarup, Sanjeev, Gopal Datt, Akshay Verma, Prashant Chaudhary for the Appellant.

A Pragati Neekhra, Parth Tiwari for the Respondent.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. The appellant has assailed the judgment dated 18th October, 2004 passed by the High Court of Himachal Pradesh, Shimla in Criminal Appeal No.259 of 2002. By the impugned judgment the High Court dismissed the appeal and affirmed the judgment passed by the Trial Court dated 27th March, 2002 in Sessions Trial No.17-S/7 of 2001 wherein the Trial Court convicted the appellant and sentenced him to imprisonment for life and also to pay fine of Rs.5,000/- for the offence under Section 302 IPC and in default, further imprisonment for one year. The appellant was also sentenced by the Trial Court for the offence under Section 324 IPC to undergo imprisonment for six months and to pay fine of Rs.500/-, in default, further simple imprisonment for one month. The appellant was also sentenced for the offence under Section 27 of Arms Act to undergo imprisonment for three months and to pay fine of Rs.1000/-, in default, further simple imprisonment for one month. The Trial Court ordered that all the aforesaid sentences shall run concurrently.

2. The facts of the prosecution case as stated by Jai Pal (PW.5) are that he was carrying business of taxi in Shimla. On 31st December, 2000 at about 9 p.m. he had gone to Hotel Apsara at Cart Road, Shimla to inquire from Budhi Singh (PW.8), Manager of the Hotel Apsara regarding the booking of his taxi by some passenger staying in the Hotel. Budhi Singh (PW.8) asked Jai Pal (PW.5) to come after some time. Both of them then went together to Hotel Basant for celebrating New Year. They took wine and dinner together and remained in the said Hotel till 12 o'clock. Thereafter, Budhi Singh(PW.8) returned to Hotel Apsara while Jai Pal (PW.5) came towards Cart Road where he met Romi Kapoor (PW.6), Pawan Kumar (PW.7), Deep Chand and Rajnish alias Rintu who inquired about the booking of a room in the Hotel as earlier agreed upon. Jai Pal (PW.5) went to the Hotel Apsara where he did

not find Budhi Singh (PW.8), Therefore, he went upstairs in the Hall of the Hotel where he found accused Manjeet Singh along with Balraj and Surender Kumar were taking liquor. Jai Pal (PW.5) inquired from the appellant-accused, Manjeet Singh about the Manager of the Hotel to which the accused was alleged to have retorted that he was not the Chowkidar of the Hotel so as to know and tell about the Manager. Accused-Manjeet Singh was further alleged to have started abusing Jai Pal (PW.5) by proclaiming that he was serving in Punjab Police. The accused was further alleged to have started beating Jai Pal (PW.5) by giving him a fist blow on his mouth. Jai Pal (PW.5) ran outside. He met the above-named Romi Kapoor (PW.6), Deep Chand, Pawan Kumar (PW.7) and Rajnish. He narrated the incident to them. Romi Kapoor (PW.6), Rajnish alias Rintu and Pawan Kumar (PW.7) went inside the Hall while Jai Pal (PW.5) and one Roshan remained standing at the entrance of the Hotel. Rajnish alias Rintu inquired from the accused-Manjeet Singh as to the cause of his having given beatings to Jai Pal (PW.5). The accused was alleged to have told his companions, Balraj and Surender Kumar to tell Rajnish and his friends about the cause of the beatings to Jai Pal (PW.5). Balraj and Surender Kumar were then alleged to have abetted and instigated the accused by saying "Carbine Ka Kamal Dekhao". Whereupon accused was alleged to have fired shots from his Carbine which hit Rajnish alias Rintu, Romi Kapoor (PW.6), Jai Pal (PW.5) and Pawan Kumar (PW.7). Rajnish alias Rintu sustained two shots on his chest and he fell down on the ground. The accused and Balraj were alleged to have run away after the gun shots. Jai Pal (PW.5) lifted Rajnish alias Rintu and carried him to I.G.M.C. Hospital, Shimla, where he was declared dead.

3. On the telephonic message of one Pradeep Kumar, Jagdish Ram (PW.25), Station House Officer, Police Station Sadar reached the spot. Surender Kumar, a companion of the accused, was apprehended from the toilet of the Hotel. Since, the injured persons had already been taken to the Hospital,

A. Jagdish Ram (PW.25) went to the Hospital and recorded the statement of Jai Pal (PW.5), on the basis of which a case for the offences under Section 302, 307 and 323 read with Section 34 IPC came to be formally registered vide F.I.R. No.1/2001.

B 4. Post-mortem examination was conducted by Dr. V.K. Mishra (PW.24) who found the following two ante-mortem bullet injuries on the person of the deceased Rajnish alias Rintu:

C (i) *A circular wound of entry one centimeter in diameter, 1.5 cm medial to right nipple, 18 cm below right shoulder joint. Dry clotted blood was present around the wound. There was no blackening, tattooing, singeing, burning etc;*

D (ii) *A circular wound of entry 1 cm x ½ cm between the base of 1st and 2nd metatarsal bone of left foot, dorsum with dry clotted blood present around the wound. No blackening, tattooing, singeing, burning etc. noticed over the skin."*

E In the opinion of Dr. V.K. Mishra (PW.24), the death was due to haemorrhagic shock as a result of laceration of lung due to gun shot injury.

F 5. On Medical Examination of Romi Kapoor (PW.6), Dr. M.P. Singh(PW.1) found the following injuries on the person of Romi Kapoor:

"Local Examination

G 1. *A CLW 1 cm X 0.5 cm X 1 cm in size placed horizontally on little side of left upper arm on lower part of deltoid muscle, red in colour with dark edges due to soot with irregular margins which were depressed.*

H 2. *A. CLW 1 cm 0.5 cm 1 cm in size placed horizontally approximately 2.5 cm lateral to first*

would on lateral inside of left upper arm on lower part of deltoid muscle with irregular margins elevated and margins deliberated red in colour. Same marks were present over sweater and shirt worn."

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As per the opinion of the doctor, injuries Nos.1 & 2 were bullet injuries and the same were dangerous to the life as per rule of gun shot injuries. The Doctor has also issued MLC Ext. PW-2/B in respect of the said injuries.

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6. On the same day, Dr. M.P. Singh (PW.1) has also examined injured Pawan Kumar and observed as under:

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"Local injuries:

1. A CLW over right foot approximately 5 cm about tip of right big toe placed horizontally 1 cm X 0.5 cm 1 cm in size with irregular margins red in colour.
2. A bruise bluish in colour present 1 cm X 0.5 cm in size placed obliquely over fifth metatars o-phalangel joint running lately on right foot.

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On the basis of x-ray report, the injury Nos.1 and 2 were declared dangerous to the life and were fresh in duration and were caused by a blunt weapon. The Doctor has issued MLC Ext.PW-1/ C."

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On the same day, Dr. M.P. Singh (PW.1) has also examined injured Jai Pal (PW.5) and found as under:

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"Local Injuries

1. A CLW 1.5 cm in size placed in the middle of inner side of upper lip placed obliquely upwards and lately on left side, reddish scabbing over lip present with clotted blood.

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A 2. *A bruise present over upper lip in the centre reddish blue in colour 1 cm X 0.5 cm in size placed vertically. No other injury was present. Teeth were normal. Injuries No. 1 and 2 were simple and the duration of injuries was within 24 hours and were caused by blunt weapon."*

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After his examination Doctor has issued MLC Ext.PW-1/

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C 7. The accused-Manjeet Singh too was subjected to medical examination, which was carried out by Dr. Dinesh Rana (PW.2) on 1st January, 2001 at about 5.55 p.m. The accused at the time of such medical examination complained of pain in the fifth knuckle region of the left hand. X-ray was advised. However, local examination revealed the presence of

D a red colour contusion and swelling on such knuckle region. The accused also complained of breaking of upper incisor tooth. He was referred to Dental Surgeon. On the basis of dental opinion, such injury was opined to be of a simple nature having been caused within the probable duration of 24 hours.

E 8. Balraj, a companion of the accused, was also medically examined by Dr. Dinesh Rana (PW.2). Following injuries were found on his person:

F (i) *4 cm 1 cm abrasion over the dorsum of right forearm;*

(ii) *1.5 cm x 1.5 cm round abrasion red in colour, above the wrist joint;*

G (iii) *3.5 cm x 2 cm abrasion, red in colour with linear scratch in the mid. 3 cm outer aspect of the left knee joint;*

(iv) *Multiple irregular abrasions on the entire lateral aspect of the left lower leg. Red in colour, and*

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(v) *Small irregular abrasion on the left side of the forehead. Red in colour.*" A

All the injuries were opined to be of simple nature having been caused with a blunt weapon within the probable duration of 24 hours. B

9. The other companion of the accused, namely, Surender Kumar was medically examined by Dr. Rajneesh Sharma (PW.4) on 1st January, 2001 at about 4.35 a.m. One injury, that is, laceration over the fore-head 1.5 cm x 1 cm x 0.5 cm was found. He was smelling of liquor and there was slurring of speech. The injury was simple in nature having been caused with a blunt weapon with the probable duration of 6 hours. C

10. On having been produced by the accused, Carbine-Ex.P4 with empty magazine vide memo Ex.PW5/C were taken into possession by Gulam Mohammad(PW.26), Additional Station House Officer of Police Station Sadar, who had partially investigated the case. Six live cartridges Ex.P1 to P6 were also produced by the accused, which were taken into possession vide memo Ex.PW5/D by Gulam Mohammad(PW.26). Six empty cartridges were taken into possession from the spot by Gulam Mohammad(PW.26) vide memo Ex.PW5/E. Service belt of the accused, which was lying on the bed in the Hall of the Hotel was also taken into possession vide memo Ex.PW5/F. D

11. The Ballistic Expert to whom the carbine, live and empty cartridges were sent for examination, vide report Ex.PW25/E has opined that the empty cartridges were fired from the carbine Ex.P4. E

12. On completion of the investigation the accused along with his two companions Balraj and Surinder Kumar were sent up for trial. G

The accused was charged for the substantive offences under Section 302 and 307 IPC, and under Section 27 of the Arms Act, 1959. His two companions, Balraj and Surinder H

A Kumar, were charged for the offence under Section 114 read with Sections 302 and 307 IPC, for having abetted and instigated the commission of the offences under Section 302 and 307 IPC by the accused.

B 13. The accused and his two companions pleaded not guilty to the charge and claimed trial. The prosecution in support of its case examined as many as 26 witnesses.

C 14. The learned Additional Sessions Judge, on consideration of the evidence coming on the record, by the impugned judgment, convicted and sentenced the accused- Manjeet Singh as mentioned above.

D 15. The accused was acquitted of the offence under Section 307 IPC. The two companions of the accused, Balraj and Surinder Kumar were acquitted of all the charges framed against them.

E 16. By the impugned judgment the High Court noticed the submission made on behalf of the appellant and on appreciation of the evidence on record dismissed the appeal and affirmed the conviction and sentences imposed by the Trial Court.

F 17. Learned counsel for the accused has assailed the conviction and sentence on the ground that the accused had acted in exercise of the right of private defence. It was submitted that the genesis of the occurrence was different from what the prosecution has suggested and highlighted. In fact, the occurrence had taken place in the manner suggested by the accused in his defence. The deceased and his companions had made a forcible entry into the Hall of the Hotel and started beating the accused and his two friends and in such course they had tried to snatch the carbine, which got fired during the scuffle.

G 18. From the record, we find that neither the accused nor his two companions in the statements recorded under Section 313 Cr.P.C., has stated that the deceased and his companions

were the aggressors and that the accused was acting in exercise of the right of private defence. In fact, their case is that of total denial. There is nothing on the record to suggest that the accused or his companions received injuries at the hands of the deceased or the deceased tried to snatch the carbine of the accused. No evidence has been brought on record that the deceased and his companions entered the Hall of the Hotel with arms.

19. Under Section 96, IPC, "Nothing is an offence which is done in the exercise of the right of private defence". Right of private defence of the body and of property has been enumerated under Section 97, IPC, subject to the restrictions contained in Section 99, IPC. As per the said section every person has a right to defend-

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

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

Section 102, IPC, deals with commencement and continuance of the right of private defence of the body as follows:

"Section 102. Commencement and continuance of the right of private defence of the body.- The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues."

A The extent and limitations of the right of private defence is prescribed under Section 96 to 106, IPC. Such a right can be exercised only to defend the unlawful action and not to retaliate.

B 20. This Court in *George Dominic Varkey v. The State of Kerala*, (1971) 3 SCC 275, has held:

"6.....Broadly stated, the right of private defence rests on three ideas: first, that there must be no more harm inflicted than is necessary for the purpose of defence;

C secondly, that there must be reasonable apprehension of danger to the body from the attempt or threat to commit some offence; and, thirdly, the right does not commence until there is a reasonable apprehension. It is entirely a question of fact in the circumstances of a case as to

D whether there has been excess of private defence within the meaning of the 4th clause of Section 99 of the Indian Penal Code, namely, that no more harm is inflicted than is necessary for the purpose of defence. No one can be expected to find any pattern of conduct to meet a

E particular case. Circumstances must show that the court can find that there was apprehension to life or property or of grievous hurt. If it is found that there was apprehension to life or property or of grievous hurt the

F right of private defence is in operation. The person exercising right of private defence is entitled to stay and overcome the threat."

G 21. In *Moti Singh v. State of Maharashtra*, (2002) 9 SCC 494, this Court held that dimension of the injuries may not be serious, it is the situs of the injuries that would indicate whether the accused could reasonably entertain the apprehension that at least grievous injuries/hurt would be caused to him by the assailants unless aggression is thwarted.

H 22. In the present case during the course of cross-examination of the prosecution witnesses, especially Jai

Pal(PW.5), Romi Kapoor (PW.6), Pawan Kumar (PW.7), Satish Kumar (PW.9) and Charanjeet Singh (PW.12) an attempt has been made on behalf of the accused to set up the case of private defence. A

23. In *Rajender Singh and others v. State of Bihar*, (2000) 4 SCC 298, dealing with the similar proposition this Court held as follows: B

"Non-explanation of the injuries on the person of the accused, ipso facto, cannot be held to be fatal to the prosecution case. Ordinarily, the prosecution is not obliged to explain each and every injury on the person of the deceased even though such injuries might have been caused during the course of the occurrence and they are minor in nature. But where the injuries are grievous, non-explanation of such injuries would attract the Court to look at the prosecution case with little suspicion on the ground that the prosecution has suppressed the true version of the incident." C

24. Evidence of eye-witnesses, especially of the injured, namely, Jai Pal (PW.5), Romi Kapoor (PW.6) and Pawan Kumar (PW.7), which are trustworthy, when read together, we find that non-explanation of the injuries on the person of the accused and his two companions cannot be held to be fatal to the prosecution case. D E

25. Satish Kumar (PW.9), an independent witness, who was also staying and sleeping in the Hall where the occurrence had taken place, though he was declared hostile, has admitted the correctness of the prosecution story in the following terms: F

"It is correct that when I woke up on hearing the noise, I saw a boy coming in the hall and inquiring about the Manager from the accused Manjit. It is correct that one of the associates of accused Manjit, i.e., one driver stated that we are not Chowkidar, so you tell the Manager. It is G H

A *correct that upon this accused persons started beating that boy and thereafter other associates of that boy also came in the hall of that hotel after about 5-7 minutes."*

In answer to Court question, PW.9 has stated:

B *"The driver who was with accused Manjit was heavily drunk and was also abusing the other party and Manjit accused tried to prevail upon him and thereafter said driver attempted to assault those 4-5 persons present in the hall and thereafter free fighting between the parties."*

C The above statement of Satish Kumar (PW.9) lends support to the prosecution story to show that it was the accused who was the aggressor and that the accused had not acted in private defence.

D 26. The question now requires to determine is as to what is the nature of offence that the accused has committed. The evidence produced against the accused does not show that the accused had any motive to cause death of the deceased or have intended to cause such bodily injuries which were sufficient in the ordinary course of nature to cause the death of the deceased. Evidence on record also does not establish that the injuries caused on the body of the deceased must in all probability cause his death or likely to cause his death. On the spur of the moment, during the heat of exchange of words accused caused injuries on the body of the deceased which caused his death. Therefore, the ingredients of the murder as defined in Section 300, IPC, have not been established against the accused. In our opinion, the accused was guilty of culpable homicide not amounting to murder under Section 304, IPC, and

G considering the fact that the accused had no intention to either cause the death of the deceased or cause such bodily injury as is likely to cause death of the deceased, it would be sufficient to impose on accused a sentence of seven years rigorous imprisonment and to impose on him a fine of Rs.5,000/-

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- and in default of payment of fine, a further imprisonment of A
six months.

27. We, accordingly, set aside the conviction of the accused under Section 302, IPC but hold him guilty of the offence under Section 304, IPC and sentence him to seven years rigorous imprisonment and fine of Rs.5,000/-, in default of payment of fine a further imprisonment of six months. The conviction and sentences for the offence under Section 324, IPC and Section 27 of the Arms Act passed by the Trial Court are affirmed. All the sentences shall run concurrently. If the accused-Manjeet Singh has not yet undergone the sentence imposed and affirmed by us, and is not in custody, he be taken into custody to serve the remainder. B

28. The appeal stands disposed of with the above observations and directions. C

Rajendra Prasad

Appeal disposed of. D