

My judgment

Murder by a guard

***Introduction** - Like most of the sessions cases decided by me While working at Jalgaon and nashik, the present case is also decided within six months of receiving Chargesheet i.e. in 5 months and 3 days The difference is that Such fast pace disposals are the cases is not reported to the media.*

Entire facts of the case are Like a Socio- crime trailer. It's a story of the brother, Who wanted that her husband shall be faithful to his sister and this is a story of a person often insulted by his brother-in-law and because of that He wanted to display before his brother-in-law that he will not tolerate bullying Anymore but his adventure backfired and brother-in-law was killed by him. The prosecution claims that it is a Culpable Homicide amounting to murder and The defence insists that it is a culpable homicide caused by accident. Please read the analysis at the end of the Judgment.

EXHIBIT NO.

Received on : 10/11/2005.

Registered on : 10/11/2005.

Decided on : 13/04/2006.

Duration : 0 Y.5 M.3 D.

IN THE COURT OF SESSIONS, N A S H I K.

[Presided over by : A.H.Nathani]

II Ad-hoc Additional Sessions Judge,

SESSIONS CASE NO. _____.

The State of Maharashtra,

Through :

----- Complainant.

- : **VERSUS** : -

----- Accused

CHARGE :For the offenses punishable under Sections 302 of Indian Penal Code, Sec.27(i) of Arms Act and Section 135 of the Bombay Police Act.

- : **J U D G M E N T** : -

[Delivered on 13th April, 2006)

1. Accused stand to trial for the offences punishable under Sections 302 of Indian Penal Code, Sec.27(i) of Arms Act and Section 135 of the Bombay Police Act.

2. Facts constituting the prosecution case are as under:

Deceased Raghunath was working as a driver at Nashik Merchants' Co-operative Bank, Nashik (hereinafter referred as "NMCO Bank") who was residing at Phule Nagar , a slum situated at the outskirts of Nashik City. He married his sister Ranjana to the accused before about 4 years ago. At that time, the accused was not having a good source of earning. Raghunath brought him to Nashik and made him take a certificate course in handling and using the gun. Raghunath then by using his influence secured employment as a security guard at NMCO bank.

3. Accused started to work at Dhanvardhini Branch of NMCO Bank as a security guard. Dhanvardhini branch of NMCO bank had two guns. In addition to the accused, two other security guards were also working at Dhanvardhini branch. Each guard used to be on duty for 8 hours. Out of two guns, gun bearing no.13823 was provided to the accused. The other gun bearing no.13842 was provided to the security guard Sanjay Thakur. The third guard, Ambadas Pagare, was guard without gun. The guards were supposed to keep their guns in the guard room and make an entry about taking over the gun in a register. The license of the gun was issued in the name of NMCO bank. Name of the accused was incorporated as a retainer of the gun

No.13823 along with other two guards. 4. Raghunath and the accused were not keeping good relations. The accused was not happy with the dominating nature of Raghunath.

5. On 23/6/2005, the accused decided to have drinks with Bhaskar Lokhande a co-employee in the NMCO bank working as a peon. On 23/6/2005 at about 9-00 p.m., accused and Bhaskar Lokhande proceeded to a stall near CBS and had drinks. After that they both proceeded to Phule Nagar. At Phule Nagar they met Raghunath. Accused, Bhaskar Lokhande and Raghunath again had drinks near a canal. While they were chit chatting together, the accused and Raghunath started to quarrel. Raghunath became angry and beat the accused in the presence of Bhaskar Lokhande. From there, accused proceeded to Dhanvardhini branch of NMCO bank.

6. Accused had taken sleep in the premises of the bank while security guard Sanjay Thakur was on duty. Accused was expected to resume duty at about 8.00 a.m. Of 24/6/2005. At about 7-15 a.m. Of 24/6/2005 the accused resumed the duties and Sanjay Thakur proceeded to his house. After resuming duty at about 7.45 a.m., the accused came with the gun bearing no.13823 and 10 cartridges to the house of Raghunath. Accused challenged Raghunath. Raghunath accepted his challenge and came out of the house and he started to chase the accused. The accused then fired from the gun towards Raghunath. One of the bullets hit the head of Raghunath. Raghunath died on the spot. Accused proceeded away from the place of the incident with the gun. The accused, after the incident, proceeded to Panchavati police station with the gun. He narrated the factum of the incident to the police station officer at Panchavati police station. The Police Station Officer Mr.Shinde scribed the narration of the accused. He also seized the gun and 8 cartridges produced by the accused in presence of the panchas and recorded the seizure memo. He immediately forwarded the information to the Police out post situated near Phule Nagar. He himself proceeded to the place of incident. He placed the policeman at the place of the incident and forwarded the corpse of Raghunath for post mortem. He informed about the incident to his superior.

7. When the factum of absence of the accused from the premises of Dhanvardhini branch was noticed by the scavenger of the bank. He informed the said fact to Sanjay Thakur and branch Manager Mr.Bhaskar Shinde. They both visited the branch. It was noticed by them that the gun bearing no.13823 was missing from the guard room. 10 cartridges were also missing from the guard room. The accused was not at the premises of the bank. Mr.Bhaskar Shinde reported these facts to Bhadrakali Police Station.

8. Police Inspector Mr.Medhe after receiving the information about the incident, proceeded to the place of the incident at about 9.15 a.m.. He inspected the place of incident in presence of the panchas and recorded the spot panchanama. He seized a pair of footwear, one empty cartridge, and a sample of blood stains from the place of incident. Head Constable Mr.Shinde, who is now Police Sub Inspector, reached the place of incident earlier, prepared a map of the place of the incident. Mr.Medhe recorded statements of the witnesses as per their say. Head Constable

Mr.Dusane from Arms Division removed the empty shell stuck in the gun produced by the accused in the presence of panchas in Panchavati Police Station. The said shell was also seized. Mr.Medhe forwarded the rifle, empty shell, live cartridges and sample of blood collected from the place of the incident and sample of blood received from the Civil Hospital, Nashik to Chemical Analyzer. He seized the license of the gun, register maintained by the accused and other relevant records from the Dhanvardhini branch of NMCO bank. After collection of the evidence, he filed the charge sheet in the Court of Judicial Magistrate, First Class, Nashik.

9. As the offences are triable by the Court of Sessions, Judicial Magistrate First Class committed the case to the Court of Sessions and Hon'ble Sessions Judge made over the same for trial to this Court.

10. Charge for the offences punishable under Sections 302 of Indian Penal Code, Sec.27 of Arms Act and Section 135 of the Bombay Police Act were framed and explained to the accused. The accused pleaded not guilty.

11. Defence of the accused as emerged from the mode of cross examination of the prosecution witnesses and statements of the accused under Section 313 of Cr.P.C. is that the accused had gone to the house of Raghunath with the gun to develop fear in his mind. Raghunath, however, chased him and he fired to develop a fear in the mind of Raghunath and to stop him from chasing. The bullet, however, hit Raghunath accidentally.

12. Following points arise for my determination.

1. Does the prosecution prove that the death of Raghunath is a homicide?
2. Does the prosecution prove that, on 24/6/2005 at about 7.45 a.m. At Phule Nagar, Panchavati, Nashik, the accused intentionally caused the death of Raghunath by firing bullet from the gun?
3. Does the prosecution further prove that on the same date, time and place, the accused contravened the provisions of Arms Act by firing bullet from the 0-12 bore gun?
4. Does the prosecution further proves that on the same date, time and place, the accused contravened the order of the Commissioner of Police Nashik promulgated under Section 37(i) of the Bombay Police Act?
5. What Order?

13. I record my findings on the above points as under, for the reasons mentioned herein below.

Point No.1 : In the affirmative.

Point No.2 : In the affirmative.

Point No.3 : In the affirmative.

Point No.4 : In the affirmative.

Point No.5 : As per final order.

-: REASONS :-

14. In order to prove the incident, the prosecution rely on the evidence of two eyewitnesses, namely PW-7 Shobha and PW-9 Santosh. The prosecution rely on the evidence of PW-5 Bhaskar Lokhande to establish the cause of the incident. Evidence of PW-4 Sanjay, security guard of NMCO bank and PW-3 Bhaskar Shinde Manager of Dhanvardhini branch of NMCO bank is adduced to prove the previous conduct of the accused. Evidence of PW-1 Anna panch witness is adduced to prove the collection of evidence from the place of incident. Evidence of PW-2 Arjun a panch witness is adduced to prove the factum of seizure of gun and 8 live cartridges produced by the accused at Panchavati police station immediately after the incident. Evidence of PW-6 Police Head Constable Mr.Dusane is adduced to prove the process of taking out an empty shell of cartridge stuck in the barrel of the gun bearing no.13823 produced by the accused immediately after the incident. The prosecution examined PW-8 Dr.Kasodkar to prove the cause of death of Raghunath. PW-10 PSI Mr.Shinde and PW-12 PI Mr.Medhe are examined to prove the collection of evidence by them. PW-11 Police Constable Mr.Savkar is examined to prove the publication of the notification under Sec.37(i) of the Bombay Police Act.

As to Point Nos.1 and 2 :-

15. Point no.1 is in respect of the nature of the death of Raghunath. As mentioned above, the accused is coming with the defence of causing the death by an accident. So, the evidence about the nature of death is co-related to the evidence regarding the occurrence of the incident. So, I feel it proper to determine both these points together.

16. Let's begin the scrutiny of evidence about the accessibility of the accused to the gun bearing no.13823 which as per the prosecution is the weapon of offence. PW-3 Bhaskar Shinde, Manager of Dhanvardhini branch of NMCO bank deposed before the Court that for the security of the branch three security guards used to guard the branch round the clock. He deposed that the bank is having two 0-12 bore guns of Cousins Company. He also deposed that the gun having Sr.no.13823 was provided to the accused and it was required to be handled by the guard during duty hours and keep it in a guard room after his duty is over. He also deposed that along with the gun, five cartridges were also provided to the accused. During his cross examination, the learned defence counsel brought it on record that the security guards used to carry the gun with them

whenever they used to move with the vehicle of the bank distributing cash to other branches. This evidence, however, reveals that the gun is handled by the security guards during duty hours. Evidence of PW-3 Bhaskar Shinde is supported by the evidence of PW-4 Sanjay, a security guard working at Dhanvardhini branch. He also deposed that the gun having no.13823 was provided to the accused. As per him, the security guards are required to keep the gun and the cartridges in the cupboard in the guard room and hand over the key of the cupboard to the guard taking over the duty. His evidence in respect of the above facts remained unchallenged.

17. License Exh.21 is placed on record. The license is in respect of 0-12 bore Gun no.12823. The license is in the name of the bank and initially names of three security guards were mentioned as retainers of the gun which include the name of the accused. The entries in the register at Exh.23 reveal that the accused made entries about getting gun no.13823 in the register and put his signature thereon. The entries in the register reveal that the accused was retaining the gun no.13823 since June, 2004. This evidence on record reveals that the accused had control over the gun bearing no.13823 and the cartridges. Evidence of both these witnesses reveal that the accused was having access to the cupboard in the guard room in which the cartridges were kept.

18. Now, let's consider the evidence about the proximate incident to the occurrence of the incident. PW-5 Bhaskar Lokhande is the key witness about the incident which occurred previous to the incident of the death of Raghunath. PW-5 Bhaskar Lokhande deposed about the connecting facts of the incident on the night of 23/6/2005. PW-5 Bhaskar Lokhande, who is working as a Peon in Dhanvardhini branch of NMCO bank deposed that he is well acquainted with the accused. He deposed that on 23/6/2005 he and accused decided to sit together for drinks. As per him, after his duty hours at 9.00 p.m., he and the accused proceeded to a stall selling omelet and bread near Central Bus Stand. He deposed that the accused had brought a bottle of liquor with him. Both have consumed liquor. He deposed that he then proceeded towards Raviwar Karanja, where the accused followed him and said that he also want to proceed to Phule Nagar. His evidence reveals that then both of them reached Phule Nagar. They found Raghunath in a country liquor shop. During his examination in chief, he deposed that there was an altercation between Raghunath and the accused at the country liquor shop and Raghunath slapped the accused on his face at the country liquor shop. During his cross examination, however, it is brought on record that the accused, Bhaskar Lokhande and Raghunath proceeded to the platform constructed beside a canal and there they had taken liquor together. It is also brought on record during his cross examination that the incident of altercation between the accused and the deceased occurred near the canal. It is also brought on record during his cross examination that the quarrel between Raghunath and the accused was in respect of some family affairs. The evidence of Bhaskar Lokhande in respect of the fact of Raghunath slapping the accused on his face, remained un-shattered. Evidence of Bhaskar thus establishes that on 23/6/2005, Raghunath slapped the accused in his presence because of some family affairs.

19. Evidence of PW-4 Sanjay Thakur, a security guard reveals that he was on duty as security guard from mid-night of 23/6/2005 to 8-00 a.m. Of 24/6/2005. He deposed that at about 2-30 a.m. Of 24/6/2005, while he was discharging his duties, in the bank premises, the accused came into the premises of the bank and expressed his desire to spend the night in the premises of the bank. He made aware Sanjay that he will proceed to his home at about 4.00 a.m.. Sanjay deposed that the accused was drunk at that time. His evidence reveals that the accused slept on the platform of the bank premises till 4.00 a.m. He also deposed that he woke up the accused at about 4.00 a.m.. The accused proceeded to a utility vehicle of the bank standing in the premises of the bank and completed his sleep on the seat of the vehicle. His evidence further reveals that at about 7-15 a.m., as the accused decided to take over the charge of security from him, he handed over the charge to the accused and proceeded to his house. He further deposed that at about 8.30 a.m., he received information from the scavenger Arjun that the accused is not appearing in the bank premises. He, therefore, proceeded to the bank. His evidence further reveals that he found the guard room open and he found the gun no.138 23 missing from the cupboard along with 10 cartridges. The whole evidence of Sanjay regarding the above said facts is not shattered during the cross examination. The evidence of PW-5 Bhaskar Lokhande and PW-4 Sanjay thus reveal that on the night of 23/6/2005, the accused was insulted by Raghunath, who slapped him on his face, in presence of his friend. When the accused got possession of the gun at about 7-15 a.m., and got the key of the cupboard of the guard room where cartridges were kept, he decided to proceed to the house of Raghunath with the gun and cartridges. Incidentally, the accused is also not denying all these facts. It is his case that he proceeded to the house of Raghunath with the gun and cartridges just to develop fear in the mind of Raghunath.

20. Further facts, which occurred at the house of Raghunath, are narrated by PW-7 Shobha. Before she narrates about these facts, it is brought on record from her mouth that Raghunath spent money for the education of the accused. The accused managed to get employment because of Raghunath. Not only this, Raghunath assisted the accused to get his son treated for defective heart. Her evidence reveals that what Raghunath expected from the accused that he should keep his sister Ranjana happy. Her evidence reveals that Ranjana used to complain of illicit relations of the accused with another lady and Raghunath used to tell the accused to remain faithful to his sister. Because of such persuasion by Raghunath, the accused was unhappy. These facts narrated by PW-7 Shobha are not challenged during her cross examination. Some of these facts are, on the contrary, endorsed during the cross examination. The facts narrated by PW-7 Shobha thus goes to show that the relations between the accused and Raghunath were not merry. A conclusion can be drawn from the above evidence that the accused was not happy with the domination of Raghunath.

21. PW-7 Shobha while deposing about the incident stated that on 24/6/2005 at about 7-00 a.m., the accused came to her house with the gun. Her evidence reveals that the accused challenged her husband. She deposed that her husband got up from the bed and asked the accused as to what happened. The accused again challenged him to come outside the house. She deposed that her

husband came out of the house and tried to catch the accused. The accused then fired the gun. The bullet did not hit her husband. She deposed that the accused started to run by the road and Raghunath started to chase him. She deposed that she also started to run behind her husband. Her evidence reveals that during the chase the accused turned towards her husband and fired a bullet from the gun. The bullet hit the left side of the head of her husband and her husband sustained bullet injury. The accused then fled away from the place of incident. During her cross examination, one omission is brought on record in respect of the fact that after the incident, she chased the accused to catch him. This fact is not materially connected with the incident. So, the omission of this fact does not affect the credibility of the evidence of PW-7 Shobha. During her cross examination, it was asked to her, whether she was apprehending that the accused will certainly kill Raghunath. She said that she was not afraid of the accused and she had not apprehended that the accused would kill her husband. She deposed that the accused came just to frighten her husband.

22. On the basis of this evidence of PW-7 Shobha, learned counsel for the accused argued that the intention of the accused was just the same as estimated by PW-7 Shobha. In my opinion, the state of mind of the accused cannot be gathered from the state of mind of PW-7 Shobha at the time of the incident. Assimilation of the facts of PW-7 Shobha and her conclusions are logical because the accused was closely associated with the family of Raghunath. It is Raghunath, who secured employment for him and had several other favours for him. Considering these obligations of Raghunath on the accused, nobody who were knowing the relations of Raghunath and accused, would feel that accused will develop an intention to commit murder of Raghunath. So, the conclusions drawn by PW-7 Shobha were logical at her end. This, however, cannot be said to be the state of mind of the accused. The narration of Shobha about the occurrence of the incident is not shattered during her cross examination.

23. Before dealing with the aspect of intention of the accused, let's consider the rest of the evidence about the occurrence of the incident. PW-9 Santosh, other eye witness, also deposed that on 24/6/2006 at about 7.30 a.m., while he was proceeding to answer nature's call, he saw the accused proceeding to the house of Raghunath with the gun. He deposed that when he was answering nature's call, in one of the common latrines, situated near the house of Raghunath, he heard a bang of fire. He deposed that when he came out of the latrine, he saw Raghunath running in the lane extending an apology to the accused. He deposed that accused then fired a bullet from his gun and the bullet hit the head of Raghunath. During his cross examination, he deposed that the accused was not running ahead and Raghunath was running behind him followed by his wife. This aspect of the evidence of PW-9 Santosh is inconsistent with the evidence of PW-7 Shobha, the other eye witness. This discrepancy, however, is not sufficient to come to the conclusion that PW-9 Santosh is a planted witness as argued by the learned counsel for the defence. If he would have a planted witness, then the prosecution may have made him the witness of the whole incident. PW-9 Santosh, however, deposing about only one sequence of the whole incident.

Considering this reason, evidence of PW-9 Santosh appears natural. The above mentioned discrepancy in the evidence of PW-9 Santosh does not affect the credibility of any of them.

24. Evidence of PW-10 PSI Mr.Shinde reveals that on 24/6/2005 around 7.00 a.m., the accused came to Panchavati Police Station with the 0.12 bore gun and 8 cartridges. The accused produced the gun and the cartridges and confessed the crime before him. He deposed that he seized the gun and cartridges from the possession of the accused in the presence of the panchas by recording seizure memo Exh.13. He also deposed to have recorded the confessional statement cum self incriminatory First Information Report as stated by the accused. The self-incriminating First Information Report containing the confession before a police officer cannot be used as evidence against the accused as it is hit by the provisions of Sec.25 of the Indian Evidence Act. The evidence of PSI Mr. Shinde is, however, relevant to prove the conduct of the accused. The self-incriminating FIR also can be used to the extent of revealing the subsequent conduct of the accused after the incident.

25. PW-2 Arjun, panch witness deposed that on 24/6/2005, at about 8.00 a.m., while he was proceeding to his house by Dindori Road he found the accused approaching the police station with the gun. He deposed that he was present at the police station when the accused produced the gun before PSI Mr.Shinde and the gun was seized by Mr.Shinde in his presence by drawing seizure memo Exh.13. He proved the contents of the seizure memo Exh.13. Contents of the seizure memo Exh.13 reveal that a single barrel 0.12 bore gun bearing No.HPM 13823 and 8 live cartridges of 0.12 bore gun having letters KF-12 were seized from the accused in his presence. Evidence of PW-2 Arjun which is not shattered during the cross examination on the contents of the seizure memo Exh.13 thus reveal that 0.12 bore gun bearing no.13823 was seized from the possession of the accused at Panchavati police Station on the morning of 24/6/2005 in his presence.

26. Evidence of PW-6 Police Constable Mr.Dusane reveals that on 24/6/2005 he was called at Panchavati police station. He deposed that on the request of PI Mr.Medhe he had taken out the empty shell stuck in the barrel of the gun bearing Sr.no.13823. He identified the gun article no.1 produced in the Court as the gun from which empty cartridge was removed. His evidence reveals that the empty shell was having no. KF-12. He also identified the empty shell produced in the court as the shell taken out by him from the barrel of the gun. His evidence goes to show that the gun having Sr.no.13823 was found to have been used and an empty shell from the said gun was recovered. The evidence of PI Mr.Medhe reveals that he forwarded the seized gun and empty shell to the ballistic expert. The ballistic expert report at Exh.52 reveals that the ballistic examination of 0.12 bore gun which as per him is a hammer shotgun in working condition. The expert detected residues of fire ammunition in the barrel which led him to come to the opinion that the said gun was used for firing prior to its production in the laboratory. The report reveals that the ballistic expert successfully test fired two 0.12 bore cartridges from the laboratory stock and compared them with the empty shell received from the investigation officer and found that

the characteristic feature of firing pin impression on the empties in Exh.2 and 3 tally with those two cartridges test fired from the shotgun. He, therefore, opined that the empties sent to him by the investigating officer were fired from the 0.12 bore shotgun. The opinion of the ballistic expert expressed in the certificate Exh.52 establishes that the shells sent to the ballistic expert were fired from the gun bearing Sr.no.13823 of Cousins Company.

27. Evidence of PW-1 Anna and PW-12 PI Mr.Medhe reveal that on 24/6/2005 the cement road in Onkar Baba Chawl of Phule Nagar, Nashik was inspected by the investigating officer in presence of the panchas. The investigating officer found blood stains and pieces of bones scattered at the place of cement road. He found two footwear at different places. One empty shell of the bullet was found before the house of the deceased. Whereas, blood stains, pieces of bones were found on the cement road at the distance of 100 ft. from the empty shell. The evidence also reveals that the empties, sample of blood stains and footwear were seized by the investigating officer in presence of the panchas.

28. The map Exh.42 drawn by PSI Mr.Shinde more specifically describes the place of the incident. The map reveals that the place where there was a pool of blood is at a distance of about 170 ft. from the house of the deceased. The map also reveals that the empty was found just outside the house of the deceased. One footwear was found near the house of the deceased, whereas another footwear was found at a distance of about 150 ft from the house of the deceased. The collective reading of the evidence discussed above reveals that the incident occurred as deposed by PW-7 Shobha. The fact of cartridge fired from the gun by the accused outside the house of the deceased is co-related by the presence of the empty found before the house of the deceased. The distance between the pool of blood and the house of the deceased reveals that the deceased and the accused crossed this distance before the event of firing the bullet occurred. Evidence of Shobha discussed above reveals that the accused was not very much happy with the treatment he was receiving from Raghunath. Evidence of PW-5 Bhaskar Lokhande reveals that Raghunath insulted the accused on the earlier night in his presence by scolding and slapping him. Evidence of PW-4 Sanjay Thakur discussed above reveals that the accused with some ulterior motive stayed in the bank premises without going to his house. Evidence of PW-4 Sanjay Thakur and the Branch Manager PW-3 Bhaskar Shinde reveals that immediately on getting the opportunity of getting the custody of the gun and the cartridges, the accused proceeded to the house of the deceased with the gun and cartridges.

29. Evidence of PW-7 Shobha, however, reveals that the accused did not fire at Raghunath when Raghunath was found sleeping in the bed. This fact goes to show that the accused did not come to the house of Raghunath with premeditated intention to commit his murder. The accused, on the contrary, challenged him. Evidence of PW-7 Shobha reveals that the accused and the deceased engaged in scuffle and the first bullet was fired by the accused. Here, the accused may not have the intention to kill the deceased. The evidence of PW-7 Shobha, however, reveals that

when the chase began, the accused aimed at the deceased and fired. The cartridge fired from the bullet hit the head of the deceased.

30. The post mortem notes proved by the evidence of PW-8 Dr.Kasodkar reveal that the left side of the skull of the deceased was completely opened with the lacerated material protruding out. His evidence reveals that the X-ray of the skull of the deceased revealed multiple pellets. The unchallenged evidence of Dr.Kasodkar, thus goes to show that the cartridge which hit the head of Raghunath opened his head and the pellets in the cartridge spread in the brain of Raghunath. The injury sustained by Raghunath caused his instant death.

31. It is not in dispute that the accused holds a certificate from the Military school where he received training of firing. The accused was well aware of the consequences of the firing at a person. The accused is well aware of taking the aim. The accused, thus had knowledge that firing a cartridge by aiming at the head of Raghunath would certainly cause him a fatal injury resulting in his instant death. So, the evidence discussed above reveals that the accused may not have a premeditated intention to kill Raghunath when he came to the house of Raghunath but when he fired at Raghunath by aiming his head, the accused was having intention to cause his death. When the accused fired the cartridge from his 0-12 bore gun by aiming the head of Raghunath, he was certainly having the knowledge that the injury which is going to be inflicted to Raghunath is likely to cause death of Raghunath.

32. Let's consider some observations in respect of gathering intention or knowledge on the part of the accused making him guilty of the offence of committing murder. In the case of **State of Haryana Vs. Pala and others (AIR 1996, SC, 2962)** Hon'ble Apex Court was considering the case in which the accused beat the deceased with deadly weapons on head and other vital parts of body and he died as a result of injuries. The Apex Court came to the conclusion that it must be inferred that the attack on vital parts of the body was with intention to cause death. In the present case, the accused inflicted bullet injury on the most vital part of the body of Raghunath. So, it is required to be inferred that the accused intended to cause the death of Raghunath when he fired at Raghunath by taking the aim of his head.

33. Hon'ble Apex Court in the case of **Abdul Waheed Khan alias Waheed and others Vs. State of Andhra Pradesh (AIR 2002, SC, 2961)** considered the facts in which three accused wanted to rob the deceased. When the deceased resisted, he was indiscriminately stabbed with knives till he succumbed to death. Six stab wounds were found on the body of the deceased. Because of the stab wounds the deceased fell on the ground. Medical officer opined that the stab wounds as well as head injury was the cause of death. Hon'ble Apex Court came to conclusion that the intention of three accused who indiscriminately stabbed the deceased was to cause death of the deceased. Considering the facts of this case, the same conclusion is required to be drawn about the act of the accused to inflict bullet injury to Raghunath.

34. In the case of **State of Rajasthan Vs. Dhool Singh (AIR 2004, SC, 1264)** Hon'ble Apex Court while observing about the scrutiny of evidence for coming to the conclusion about the intention of the accused observed that the number of injuries is not always the determining factor in ascertaining the intention. It is the nature of injury, the part of the body where it is caused, the weapon used in causing such injury which are the indicators of the fact whether the accused caused the death of the deceased with an intention of causing death or not. If the act of the accused in this case is considered with these parameters, it is evident that the accused caused one single injury but the injury was inflicted with the firearm, the injury was inflicted on the head and the gun was fired by taking aim at the head of the deceased. The evidence, thus, certainly reveals that the intention of the accused while inflicting the injury to Raghunath was to cause his death.

35. Considering the above discussion, I come to the conclusion that the evidence adduced by the prosecution is sufficient to prove that the accused intentionally caused death of Raghunath by firing cartridge at Raghunath from his 0.12 bore single barrel gun. I, therefore, come to the conclusion that the death of Raghunath is a homicidal and the accused is guilty of culpable homicide amounting to murder. I, therefore, answer point nos.1 and 2 in the affirmative.

As to Point No.3 :

36. The above discussed evidence on record reveals that the accused used a firearm i.e. 0.12 bore shotgun bearing Sr.no.13823 and ammunition and the license Exh.21 reveals that the gun was licensed in the name of NMCO Bank. The accused was named as the retainer of the gun in the license. The terms on the basis of which the accused was allowed to retain the gun, however, reveals that the accused was not entitled to use the gun while he was not performing his duty. The accused, thus, used the firearm and ammunition in contravention of Section 5 of the Arms Act. I, therefore, answer point no.3 in the affirmative.

As to Point No.4 :

37. The prosecution produced on record the notification under Sec.37(i) of the Bombay Police Act promulgated by the Commissioner of Police, Nashik. The Commissioner of Police is empowered to promulgate the notification under Sec.37(i). Contents of the notification Exh.28 reveal that during the period of 24/6/2005 to 8/7/2005 nobody will be entitled to possess a firearm or other weapons with him. Evidence of PW-11 Police Constable Mr.Savkar reveals that the said notification was published by him in Phule Nagar, Panchavati and Peth Road area which are within the jurisdiction of Panchavati Police Station. As per him, the publication was made by announcing the contents of the notification with the help of a mega phone. His unchallenged evidence goes to show that the contents of the notification were published. The accused carried arms in Phule Nagar area on 24/6/2005 which is the period covered by the notification. The counsel for the accused argued that the accused was the person authorized to hold the gun. The

evidence of the Branch Manager of Dhanvardhini branch of NMCO bank reveals that the accused was not authorized to carry the gun anywhere as he likes. The accused was entitled to carry the gun with him when he was discharging his duty. The accused, when he carried the gun to Phule Nagar area, certainly acted in contravention of his duty. The accused thus contravened the notification under Section 37(i) of the Bombay Police Act, promulgated by the Commissioner of Police, Nashik. The accused, thus, committed an offence described under Section 135 of the Bombay Police Act. I, therefore, answer point no.4 in the affirmative. In view of the above discussion, I hold the accused guilty of the offences punishable under Section 302 of Indian Penal Code, Section 27(i) of Arms Act and Section 135 of Bombay Police Act.

NASHIK.

(A.H. Nathani)

Date :.. II Ad-hoc Additional Sessions Judge,

N A S H I K

Continued today on 17/04/2006.

38. I heard the accused, his counsel and the learned prosecutor on behalf of the State on the point of sentence. It is argued on behalf of the State that the accused committed heinous crime of murder. His act being an intentional act of causing death with premeditation, the highest penalty which the legislation provides in the statute be awarded to the accused. The accused submitted that his aged mother, his wife and two children are depending on him. He requested for leniency while passing sentence for the sake of the future of his dependents. Learned counsel for the accused submitted that the case is not the rarest of rare which direct death penalty. He, therefore, requested to take a lenient view while passing the sentence.

39. As I discussed in the foregoing paras, when the accused came to the house of Raghunath, he was not cultivating a premeditated intention to cause death of Raghunath, hence, he had not fired at Raghunath when he was lying in the bed. The intention to cause death developed later on in the mind of the accused when he shot Raghunath. As the act done by the accused is not premeditated act, hence, the act of the accused cannot be said to be rarest of rare and is requiring award of capital punishment. With this view and considering the antecedents of the accused and dependency of his wife, children and aged mother on him, I take a lenient view while passing the sentence. I, therefore, pass the following order.

:- ORDER :-

1. The accused Ashok Shankar Kalse, is convicted of the offence punishable under Section 302 of Indian Penal Code, vide Section 235(2) of Code of Criminal Procedure. He is sentenced to undergo imprisonment for life. He is also sentenced to pay a fine of Rs.2,000/-. In default of payment of fine, he shall undergo rigorous imprisonment for three months.
2. The accused is also convicted of the offence punishable under Section 27(i) of the Arms Act vide Section 235(2) of Code of Criminal Procedure. He is sentenced to undergo rigorous imprisonment for three years. He is also sentenced to pay a fine of Rs.1,000/-. In default of payment of fine, he shall undergo rigorous imprisonment for one month.
3. The accused is also convicted of the offence punishable under Section 135 of Bombay Police Act vide Section 235(2) of Code of Criminal Procedure. He is sentenced to undergo rigorous imprisonment for four months. He is also sentenced to pay a fine of Rs.5,00/-. In default of payment of fine, he shall undergo rigorous imprisonment for one month.
4. All the sentences shall run concurrently.
5. The accused is in jail from 24/6/2005. The period of detention of the accused be considered while computation of sentence.
6. The seized gun bearing no.HPM 13823 and 8 cartridges having no.KF-12 be returned to Nashik Merchants' Co-operative Bank Limited, Nashik and rest of the seized articles be destroyed after the appeal period is over.

NASHIK. (A.H. Nathani)

Date.. II Ad-hoc Additional Sessions Judge,

NASHIK

Academic analysis

This is a classic case to understand how the mental state of mensrea is to be understood. In all the clauses of Section 300 of the Indian Penal Code, intention to cause death or intention to cause such bodily injury as is sufficient to cause death are the essential ingredients. The accused planned to take out a gun from the custody of the bank's security. However, the evidence shows that he wanted to just threaten his brother-in-law, who always used to bully and insult him in the presence of his friends, and a-day prior to the day of the incident, the deceased has insulted him in the presence of his friend and slapped him. So the plan to carry a gun will not bring the prudent mind to the conclusion that the gun was carried to commit murder. The deceased was sleeping when they accused Had been to his house with gun in his end Hand. If he wanted to cause the death of the deceased, he would have fired him while he was sleeping in bed. The accused woke him up and tried to threaten him. This time also the deceased as usual thought that the accused is under his thumb and he can bully him and beat him The deceased therefore started to rush towards the accused to catch him, and the accused started to run away with the gun. There is no intention of killing at this time. When the accused found that the deceased would overpower him, he turned towards the deceased, aimed the gun at his head, and fired the bullet. Here, we have to remember that the accused was trained how to handle the gun and how to aim the gun. Earlier, he fired two bullets just to threaten the deceased, but this time When he targeted the head of the deceased and fired the gun, his intention was clear and unambiguous: to kill the deceased. The mensrea is thus a state of mind just before committing a crime. Sometimes the intention may be nurtured, nourished, and polished for a long time, but in some cases, like the present case, it may arise spontaneously and be put into action.

Learned advocate Appearing for defence was clever and straight forward. The facts of the case were very clear and he was aware that by any means It cannot be disproved that death is a homicidal death and caused by the accused. In this situation, the best defence is to try to bring the case under the exception clauses of Section 300 and opt for lesser punishment for the accused under Section 304 of the Indian Penal Code.