were regular permits issued to respondent 3 from time to time and those permits were granted temporary extension up to Hathur and thereafter up to Jagraon on regular basis. The order of the State Transport Commissioner can also be considered as granting new regular permits on Barnala-Jagraon route because it is admitted by the learned counsel for the appellant that the procedure prescribed by section 57 of the Act was followed in this case. If at all, the grievance should be on the side of respondent 3 that the period of its permits was reduced by nine months, that is, the order having been passed on March 30, 1971, the permit was issued from July 1, 1970. But, we fail to understand how the appellant can make a grievance thereof. This submission of the learned counsel is also repelled.

(7) For the reasons given above, we find no merit in this appeal which is dismissed with costs. Counsel's fee Rs. 200 to be shared equally by respondents 2 and 3.

N.K.S.

APPELLATE CRIMINAL

Before Gopal Singh and D. S. Tewatia, JJ.

GURMUKH SINGH, ETC.,—*Appellants.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Criminal Appeal No. 424 of 1969.

August 28, 1972.

Indian Penal Code (XLV of 1860)—Section 307—Scope of—Accused person firing gun from a distance—Shot striking the victims on the chest but not causing death—Such accused—Whether guilty of an offence under section 307.

Held, that section 307, Indian Penal Code, provides that person shall be deemed to have committed an offence of attempt to murder if he does any act with such intention or knowledge and under such circumstances that if he by that act caused death, he would be guilty of murder. In order that an accused person may be held guilty of the offence of an attempt to commit murder under section 307, I.P.C., the prosecution must show that the act done by the accused was done with such intention or knowledge and under such circumstances that if by that act he caused death, he would be convicted for offence under section 302. However, if the act has been

fully carried into effect, the question of intention or knowledge is to be inferred from the result. If the act is complete and yet it does not cause death not because of any supervening or intervening circumstances but it failed because of the inherent infirmity present in it of its inability or lack of strength to bring about the result of death, the person committing the act can neither be said to have the intention nor the knowledge to cause the death.

(Paras 21 and 22)

Held, that where an accused person fires a gun from distance and the shot strikes the victim on the chest but does not cause his death, the accused cannot be said to have the requisite intention or knowledge to cause the death of his victim. The act of firing does not result in causing the death of the victim, because of the short-coming or ineffectiveness of the act and not because of any intervening circumstances beyond the control of the accused in spite of the act done by him being effective in causing the death. The intention in the mind of a person is something abstract. It is difficult to probe into its existence or nature by any direct evidence. It has to be inferred from the conduct of the person cherishing it. The existence of knowledge is awareness of the mind about the facts pertaining to an act and its result or consequence. Taking into consideration the distance from which the accused fires at his victims and also the nature of missile of pellets employed by him in firing, the inference drawable is one of the accused possessing neither the intention nor the knowledge to cause death of his victims and hence he is not guilty of an offence under section 307 of the Code.

Appeal from the order of Shri C. S. Tiwana, Sessions Judge, Sangrur, dated the 11th April, 1969, convicting the appellants.

Cr. Misc. No. 1551/1970.

Application under section 561-*A Cr. P, C, praying that the parties be allowed to compound the offence and the appeal be allowed and the appellants be set at liberty.*

Ashok Bhan, Advocate, *for the appellants.*

R. S, Palta, Advocate, for Advocate-General, Punjab, *for the respondent.*

B. L. Goswamy, Advocate, *for the complainant.*

JUDGMENT

GOPAL SINGH, J.—The following three cases are to be disposed of by this judgment:—

(1) Criminal Appeal No. 424 of 1969—
Gurmukh Singh etc. Versus Punjab State.

(2) Criminal Appeal No. 796 of 1969—
Punjab State Versus Balbir Singh.

(3) Criminal Revision No. 407 of 1969—
Jangir Singh Versus Gurmukh Singh etc.

(2) Criminal Appeal No. 424 of 1969 has been filed by Gurmukh Singh and his three brothers, Balbir Singh, Kaka Singh and Gurcharan Singh. Balbir Singh appellant has been convicted under section 324, Indian Penal Code. He has been sentenced to rigorous imprisonment for six months. All the four appellants have been convicted under Section 324 read with Section 34, Indian Penal Code. They were tried for causing injuries to Jangir Singh, Harnek Singh and Gurdev Singh. Gurmukh Singh has been sentenced to rigorous imprisonment for one year and to pay fine of Rs. 500 or in default of payment of fine to further rigorous imprisonment for six months whereas the other three appellants have been sentenced to rigorous imprisonment for one year. One moiety of the fine recovered from Gurmukh Singh was directed to be paid to Jangir Singh injured.

(3) All the appellants were tried for offence under Section 367, Indian Penal Code while their co-accused Hukma was tried for offence under Section 368, Indian Penal Code. All of them were acquitted of these offences. Balbir Singh appellant was tried for offence under Section 307, Indian Penal Code for attempt to murder Harnek Singh and Gurdev Singh. He was also acquitted for that offence.

(4) In this appeal, there has been filed an application for grant of permission to compound the offences, for which the appellants have been convicted.

(5) Criminal Appeal No. 796 of 1969 has been filed by the State challenging the acquittal of Balbir Singh for offence under Section 307, Indian Penal Code.

(6) Criminal Revision No. 407 of 1969 has been filed by Jangir Singh injured. It is prayed in the revision petition that Balbir Singh should have been convicted under Section 307, Indian Penal Code, that all the appellants deserved conviction under Section 326 read with Section 34, Indian Penal Code, that all of them should have been convicted under Section 367, Indian Penal Code and that the sentences as awarded under Section 324 and under Section 324 read with Section 34, Indian Penal Code are inadequate.

(7) Facts leading to the prosecution case are as under:—

(8) The appellants are sons of Bhagwan Singh. Jangir Singh. Harnek Singh and Gurdex Singh, the three injured persons and Surjit Singh, their brother an eye-witness, the appellants and the

acquitted accused Hukma are residents of Gaggarpur. The occurrence took place in village abadi on October 6, 1968.

(9) One year prior to the occurrence, Jangir Singh, who is a Lambardar in the village gave evidence as a prosecution witness in an opium case, in which Gurmukh Singh appellant was hauled up. Short time before the occurrence, there was recovered opium from Karnail Singh, who is friend of Gurmukh Singh appellant and who came to stay with him in the village. The appellant suspected that Jangir Singh was responsible for these recoveries. There was a land suit going on between Gurcharan Singh appellant and Surjan Singh. In that suit, Jangir Singh rendered assistance to the adversary of Gurcharan Singh appellant.

(10) At 8 p.m. on October 6, 1968, Surjit Singh and his brother Jangir Singh irrigated the fields and returned to the village habitation. They were confronted by Gurmukh Singh appellant armed with a gandasa, Balbir Singh with a spear and Kaka Singh and Gurcharan Singh with lathis. Gurmukh Singh challenged Jangir Singh by saying that he would teach him lesson for his having appeared as a witness against him in the opium case. So saying, he gave a blow with his gandasa on the right side of the face close to the eye to Jangir Singh. The second blow was inflicted by Balbir Singh with his spear injuring the right ankle of Jangir Singh. The other two appellants also dealt blows to Jangir Singh with their lathis. After receipt of these blows, Jangir Singh fell down. While fallen down, Gurmukh Singh gave one more blow with his weapon to Jangir Singh. Surjit Singh son of Tara Singh and Sucha Singh were present close by at the time of occurrence. They had just then returned from their fields. The witnesses continued raising alarm but the appellants did not leave Jangir Singh. Thereafter, Gurmukh Singh and Balbir Singh dragged Jangir Singh towards their house situate at a distance of 65 karams from the place where he had been initially attacked. They threatened the witnesses and told them to disappear otherwise they would be killed. Surjit Singh son of Ganda Singh and brother of Jangir Singh rushed to his house situate at a distance of 200 karams and brought from there his brothers Harnek Singh and Gurdev Singh. When both Surjit Singh, Harnek Singh and Gurdev Singh were at a distance of 6 or 7 karams from the outer door of the house of Gurmukh Singh, Balbir Singh came out and fired at Harnek Singh and Gurdev Singh with his unlicensed gun. The pellet-shots hit both of them. Thereafter, they ran back to their houses.

(11) The report of the occurrence was lodged by Surjit Singh son of Ganda Singh at 11.05 p.m. at Kotwali Police Station at Sangrur. Rachhpal Singh, Sub-Inspector reached the house of Gurmukh Singh at 12.30 a.m. on October 7, 1968. He saw Jangir Singh lying in injured condition in the courtyard of the house of Gurmukh Singh. Hukma and Gurmukh Singh were present in the house. Both of them were taken in custody. Gandasa being carried by Gurmukh Singh at the time he opened the door for entry of the police was also taken in possession by the police. Some blood-stained earth was recovered from the spot where Jangir Singh was lying. Pair of shoes of Jangir Singh and his turban, which were lying in the lane outside the house of Gurmukh Singh were also recovered.

(12) Examination of Jangir Singh at 4.30 a.m. on October 7, 1968 by Dr. Ved Parkash Goyal showed the existence of 12 injuries on his person. Out of them, five are incised wounds, one each on the right cheek, on the cartilage of the left ear and on medial side of the right leg and two on the left leg. Out of the other injuries, there is a swelling, four bruises and an abrasion on various parts of the body. The doctor gave the opinion that the incised wounds on the right cheek and the medial side of the right leg were grievous injuries.

(13) The examination of Harnek Singh at 6.30 a.m. on that day showed six gun-shot wounds, four on the chest, one on the lower part of the abdomen and one on the right thigh. The doctor gave the opinion that all the injuries were simple.

(14) The examination of Gurdev Singh showed the existence of two gun-shot wounds, one on the shoulder and the other on the back of the right arm. Both the injuries were declared simple.

(15) Balbir Singh and Gurcharan Singh appellants were arrested by Harnarain Singh, Assistant Sub-Inspector on October 10, 1968 while Kaka Singh appellant was arrested by him on October 11, 1968.

(16) At the trial, Surjit Singh son of Ganda Singh P.W. 3, Jangir Singh P.W. 4, Gurdev Singh P.W. 8, Harnek Singh P.W. 9 and Surjit Singh, son of Tara Singh P.W. 11 appeared as eye-witnesses of the occurrence. Sucha Singh P.W. 12, another eye-witnesses was not examined by the prosecution but only tendered for cross-examination by the defence.

(17) In their statements under Section 342, Criminal Procedure Code, the appellants and Hukma pleaded not guilty. Gurmukh Singh

appellant stated that on the date of occurrence at 9 or 10 p.m., he heard noice emanating from the side of the house of Hukma suggestive of attack on him, that he and Darshan Singh reached his house armed with lathis, that they saw Harnek Singh catching hold of Hukma by his neck and administering beating to him with fist blows, that Jangir Singh carried a gandasa while Harnek Singh and Gurdev Singh were armed with lathis and their brother Surjit Singh was standing outside the house armed with a 12 bore shot gun, that while Hukma was being rescued by Gurmukh Singh and Darshan Singh, some injuries were caused by them to Jangir Singh, that Gurdev Singh inquired from Surjit Singh as to who was being killed, that Surjit Singh fired at Gurdev Singh, that after being rescued Hukma went inside his house, that Gurmukh Singh and Darshan Singh returned to their houses and that thereafter the four brothers vanished from there. In his statement Hukma accused supported Gurmukh Singh. The other three appellants pleaded ignorance about the occurrence.

(18) On the basis of evidence, the trial Court took the view that the prosecution had failed to make out a case of offence either under Section 367, Indian Penal Code against the four appellants or of offence under Section 368, Indian Penal Code against Hukma, with the result that all the accused were acquitted of these offences. The trial Court held Balbir Singh appellant guilty of offence under Section 324, Indian Penal Code while all the four appellants were found guilty of offence under Section 324 read with Section 34, Indian Penal Code as referred to above in earlier part of the judgment.

(19) The State has not challenged the correctness of those convictions for the said offences or the validity of the sentences awarded to them. The appeal filed on behalf of the State confines itself to the challenge of validity of acquittal of Balbir Singh for offence under Section 307, Indian Penal Code recorded by the trial Court. The only point that has been raised in the appeal filed on behalf of the State is that the provisions of Section 307, Indian Penal Code fully apply to the facts of the present case and the view taken by the trial Court that Section 307, Indian Penal Code could not be attracted against Balbir Singh is not called for.

(20) According to the account of occurrence given by Harnek Singh and Gurdev Singh injured persons and both Surjit Singhs, Balbir Singh appellant fired pellet-shots at Harnek Singh and Gurdev

Singh from a distance of 30 or 35 feet. There is no doubt that there are four pellet injuries on the anterior aspect of the chest of Harnek Singh. Out of the remaining two injuries, one is on the abdomen while the other is on his right thigh. Out of the two gun-shot injuries received by Gurdev Singh, one is on the top of the right shoulder while the other is on the back of the right fore-arm. No pellets have been recovered either from the bodies of these two persons or from walls or any other structure close to the place where the injured were present. The doctor has given the evidence that there is no charging or blackening around any of these injuries. The medical evidence does show that injuries have been caused with a fire-arm but they have been caused from a distance of more than 30 feet and consequently beyond the range of their being effective so as to damage the vital viscera below. The fact of so causing of these injuries to these injured persons as they are located has been proved by the medical evidence. The only point, which has been argued on behalf of the State is that in the face of these facts, Section 307, Indian Penal Code is applicable and there is no warrant for acquittal of Balbir Singh for offence under Section 307, Indian Penal Code, with which he was charged for causing injuries with his gun to these two injured persons.

(21) Section 307, Indian Penal Code provides that a person shall be deemed to have committed an offence of attempt to murder if he does any act with such intention or knowledge and under such circumstances that if he by that act caused death, he would be guilty of murder. In order that an accused person may be held guilty of the offence of an attempt to commit murder, the prosecution must show that the act done by the accused was done with such intention or knowledge and under such circumstances that if by that act he caused death, he would be convicted for offence under Section 302, Indian Penal Code. In the present case, the act of firing with a gun by Balbir Singh appellant was an act *accompli*, namely, the shots fired from the gun actually struck against the two injured persons and caused injuries to both of them. Although four of the injuries caused to Harnek Singh are on the anterior aspect of the chest but the range, from which Balbir Singh fired and the type of missile he used did not turn out to be effective in causing death. Considering that his act of firing exhausted itself by the missile striking against the target of the two injured persons and yet that act did not cause the death of either of them, it follows that he neither had the intention nor the knowledge to cause the death. The fact remains that the act

accompli of firing at his victims did not succeed in causing the death not because of any supervening or intervening circumstances, in spite of that act but it failed because of the inherent infirmity present in the act of its inability or lack of strength to bring about the result of death by the commission of that act of firing. It is not a case, in which either the pluck of the victims or any other intervening circumstances, is responsible to avert the causing of the death of the injured but death has not been caused in spite of the full fledged act of causing injuries to the injured persons because of that act having failed to cause death. In other words, the act suffered from the lack of intention or knowledge to cause death.

(22) The question of intention or knowledge is to be inferred from the result, if the act itself has been fully carried into the effect, as it has been in the present case. Taking into consideration the weak effect of the missile, which was projected out of the gun, when the appellant fired and also the distance from which he fired, that act could not have caused death and hence both the victims in spite of injuries received by them did not succumb to those injuries. From these facts and circumstances, the inference is irresistible that the appellant did not have the requisite intention or knowledge to cause death of the victims. The act of firing did not result in causing the death of the victims because of the shortcoming or ineffectiveness of the act and not because of any intervening circumstance beyond the control of the appellant in spite of the act done by him being effective in causing the death. The intention in the mind of a person is something abstract. It is difficult to probe into its existence or nature by any direct evidence. It has to be inferred from the conduct of the person cherishing it. The existence of knowledge is awareness of the mind about the facts pertaining to an act and its result or consequence. Taking into consideration the distance from which the appellant fired at the injured persons and also the nature of missile of pellets employed by him in firing, the inference drawable is one of the appellant possessing neither the intention nor the knowledge to cause death of his victims.

(22) On the scrutiny of the above said facts and the attending circumstances in relation to the act of firing by the appellant at the injured persons, the essential ingredient of Section 307, Indian Penal Code pertaining to the proof of existence or knowledge on the part of the appellant has not been established. In the result, the appeal filed on behalf of the State must fail and is disallowed.

(24) There has been filed criminal miscellaneous application No. 1551 of 1970 in Criminal Appeal No. 424 of 1969 on behalf of the four appellants. There has also been filed a compromise deed signed by Jangir Singh, Gurdev Singh and Hardev Singh injured persons and Surjit Singh son of Tara Singh and Sucha Singh. In both these documents, it is stated that the appellants have compounded the offences with the injured persons and the eye-witnesses who gave the evidence in the case. Their contents show that the parties have buried the hatchet and the appellants have felt repentant for what they have done. Both the parties have stated that in order to maintain cordial relations between the members of the party of the complainant and that of the appellants, grant of permission is necessary. We find that it is a fit case for the permission being granted and the parties being allowed to compound the offences under Section 324 and 324 read with section 34, Indian Penal Code. The same is grant-

(25) The appellants were released on bail on April 17, 1969, when their appeal was admitted to hearing. The offences having been compounded by the parties, the appellants need not surrender to their bail bonds. The appeal filed on behalf of the appellants is decided accordingly. The party of the complainant including Jangir Singh petitioner having along with the appellants prayed for compounding of offences, the revision petition filed by him has become infructuous and is dismisssed accordingly.

Tewatia, J.—I agree.

N.K.S.

APPELLATE CRIMINAL

Before Gurdev Singh and Gurnam Singh, JJ.

MUNICIPAL COMMITTEE, AMRITSAR,—*Appellant.*

versus

BALDEV RAJ,—*Respondent.*

Criminal Appeal No. 286 of 1969.

August 30, 1972.

Prevention of Food Adulteration Act (XXXVII of 1954)—*Sections* 10(7) *and* 16(1)(*a*)—*Sale of sample of adulterated article of food to Food Inspector—Seller not connected with the shop nor aware of*