Laws degree in the Department of Laws amongst others as consolidated courses. On behalf of the appellant no serious challenge could be posed to the consistent stream of precedent in this regard.

(20) I do not find any merit in the second contention raised on behalf of the appellant which is consequently rejected.

(21) As both the contentions raised on behalf of the appellant fail, the Letters Patent appeal is hereby dismissed and the judgment of the learned Single Judge affirmed. The parties, however, will bear their own costs.

Prem Chand Jain, Judge.—I agree.

Gurnam Singh, Judge.—I agree.

N.K.S.

FULL BENCH

APPELLATE CRIMINAL

..Before O. Chinnappa Reddy, B. S. Dhillon and M. R. Sharma, JJ.

SARVINDER SINGH AND ANOTHER,—*Appellants.*

versus

THE STATE,—*Respondent.*

Criminal Appeal No. 44 of 1975.

September 8, 1976.

Indian Penal Code (XLV of 1860)—Sections 307 and 324—Gunshot fire resulting in simple injuries—Intention or knowledge of the accused—Whether to be inferred from the result of the act only—Accused—Whether could be guilty of an offence under section 307

Held, that intention or knowledge is not to be measured by the consequence. It has to be gathered from all the surrounding facts and circumstances. If an act is done with the intention or knowledge requisite for the commission of the offence of murder, and, if there are no circumstances introducing a defence to a charge of murder either by way of a general or a special exception, the offence would be attempt to murder, if the act does not result in death, whatever be the reason for the act not resulting in death, whatever be the nature of the injuries, and even if no injuries are caused. The requisite intention or knowledge is not to be excluded from the mere fact that death is not the consequence of the Act. Such an act may not result in death for a variety of reasons, such

as, the ineffectiveness of the weapon, the ineffectiveness of the assailant, the movement of the victim, the intervention of a sudden obstruction, etc. It is true that the mere act of firing a gun need not necessarily lead to the inference of the requisite intention or knowledge necessary to make the offence one of murder. A person may fire a gun in the air intending to frighten some one, a person may aim and shoot at some one's legs intending to cause injury to the leg, a person may discharge a gun from a distance of 300 yards knowing that the maximum range of the gun is 30 yards. In such or similar situations, one may not draw the inference of the requisite intention or knowledge for the commission of the offence of murder. But, if a person shoots at another at a sufficiently close range or if a person fires a loaded canon at a crowd of persons, the requisite intention or knowledge can be readily inferred. Such an intention or knowledge cannot be refused to be inferred merely because the act does not result in the death of any one either because the weapon is defective or because the powder is wet or the pellets too small, or because only a few pellets strike the victim, the aim of the assailants being poor, or because the vimtim is so lucky that no vital portion of the body is injured or expert medical attention available on the spot saves his life and so on. Thus an accused firing gunshot resulting in simple injuries could be guilty of an offence under section 307 of the Indian Penal Code 1860.

(Para 12)

Case referred by Hon'ble Mr. Justice Mohan Singh Gujral and Hon'ble Mr. Justice D. S. Tewatia to a Full Bench for decision of an important question of law involved in the case vide *order dated 30th January, 1975 passed in Criminal Misc. No. 220 of 1975. The Full Bench consisting of Hon'ble Mr. Justice O. Chinnappa Reddy, Hon'ble Mr. Justice Bhopinder Singh Dhillon and Hon'ble Mr. Justice M. R. Sharma finally decided the case on 8th September, 1976.*

Appeal from the order of Shri Dev Raj Saini, Sessions Judge, Faridkot dated the 20th December, 1974 convicting the appellants.

Charge :—Under Sections 302 and 307 Indian Penal Code.

Sentence :—Sarvinder Singh alias Chhinda sentenced to undergo rigorous imprisonment for 5 years while Balkar Singh sentenced to undergo imprisonment for life.

M. R. Mahajan, Advocate with Narinder Singh, Advocate and Arvind Goel, Advocate, *for the appellants.*

M. D. N. Rampal, Deputy Advocate-General, (Punjab), *for the respondent.*

Mr. D. R. Puri, Advocate, *for the complainant.*

O. Chinnappa Reddy, J.—(1) Sarvinder Singh *alias* Chhinda, Baldev Singh and Balkar Singh were tried by the learned Sessions Judge, Faridkot for offences under sections 302 and 307 read with section 34, Indian Penal Code.

(2) The prosecution case briefly was that Sarvinder Singh *alias* Chhinda and Balkar Singh were licensees of the liquor shop at Daulat Pur Ucha from 1st April, 1974, and that Baldev Singh was assisting them in running the shop. On 9th April, 1974, Jit Singh (deceased) son of Kartar Singh (P.W. 6), went to the liquor shop at about 8 p.m. to purchase a bottle of liquor. His father P.W. 6 who was at home heard some loud noise from the direction of the liquor shop which was at a distance of about 190 to 200 yards from his house. He went towards the liquor shop. He found his son Jit Singh and two others Surjit Singh (P.W. 8) and Darshan Singh (P.W. 9) just outside the liquor shop. His son was saying that the accused were selling liquor after mixing water with it. The three accused were present inside the liquor shop. Balkar Singh denied the accusation and used filthy language. There was an exchange of words between the deceased and the accused. At that time, Balkar Singh had a double-barrelled gun with him. Chhinda had a single-barrelled gun and Baldev Singh had a pistol. Surjit Singh and Darshan Singh asked the accused why they were abusing. Chhinda fired a shot with his gun and Darshan Singh was hit by the pellets. Baldev Singh fired a shot with his pistol and Surjit Singh was hit. Balkar Singh came out running from inside the shop and fired his double-barrelled gun from a close range at Jit Singh who was hit on the left side of the abdomen. Jit Singh fell down at once. Surjit Singh and Darshan Singh ran away towards their houses. Kartar Singh P.W. 6 went near his son and sat by his side. Very soon afterwards one Santokh Singh came there and asked Jit Singh as to what had happened. Jit Singh told him, P.W. 6 also told him. Thereafter P.W. 6 and Santokh Singh took Jit Singh in a tractor-trailor to the civil hospital at Moga, at a distance of 14 or 15 miles from the village. He was admitted into the hospital. On the information sent by the medical officer, the Sub-Inspector of Police, P.W. 17 went to the hospital. Jit Singh was not in a position to make any statement. P.W. 17 recorded the complaint of P.W. 6 which he registered as the first in formation report. Jit Singh died in the hospital on 10th April, 1974, at about 5.40 a.m. The Sub-Inspector who had gone to the village in the meanwhile recorded the statements of Surjit Singh and Darshan Singh and sent them to the hospital for medical examination. Thereafter, he held inquest and sent the dead body for *post mortem*

examination. He searched for the accused, but they were not available in the village. Baldev Singh and Chhinda were arrested on 19th April, 1974, and a pistol and single barrelled gun were recovered from their possession. Balkar Singh was arrested on 25th April, 1974 and a double barrelled gun was recovered from him.

(3) The accused denied the offence. According to their version, Joginder Singh was running the liquor shop on their behalf. On 10th April, 1974, Joginder Singh came to them and told them that Jit Singh had come drunk to the liquor shop with a *gandasa* and demanded a bottle of liquor on credit. When Joginder Singh refused to do so, there was an exchange of abuse and Jit Singh broke bottles of liquor in the shop and attacked Joginder Singh with his *gandasa*. Joginder Singh then shot with his gun injuring Jit Singh and also Darshan Singh and Surjit Singh who had also come there armed with *gandasas* to help Jit Singh. According to the statement of Balkar Singh, he took Joginder Singh to the police station in order to give a complaint, but the police refused to record their statements. They were both detained in the police station. Joginder Singh was subsequently released but he was kept under detention and it was wrongly shown as if he was arrested on 25th April, 1974.

(4) The learned Sessions Judge rejected the evidence of the Sub-Inspector of Police and other witnesses in regard to the dates of arrest of the accused and the recoveries said to have been made from them. However, he accepted the evidence of the three eye-witnesses, Kartar Singh, Surjit Singh and Darshan Singh. He found that the three accused did not share any common intention and that each was liable for his own act. He convicted Balkar Singh under section 302 and sentenced him to suffer imprisonment for life. He convicted Sarvinder Singh and Baldev Singh under section 307, Indian Penal Code and sentenced each of them to suffer rigorous imprisonment for a period of five years. Sarvinder Singh and Balkar Singh have preferred Criminal Appeal No. 44 of 1975 and Baldev Singh had preferred Criminal Appeal No. 92 of 1975. Kartar Singh (P.W. 6) has filed Criminal Revision No. 207 of 1975.

(5) The learned counsel for the appellants read to us the relevant evidence. He argued that the learned Sessions Judge had himself found that the investigation was tainted and dishonest and, therefore, he claimed, the accused were entitled to be acquitted on that ground alone. We do not agree with the submission of the

learned counsel. No defect of investigation and no taint attached to investigation can by itself, in the absence of prejudice to the accused, justify an acquittal, nor affect the credibility of witnesses not associated with the investigation. Defective or tainted investigation may justify a closer scrutiny of the direct testimony but it will not justify rejection of the direct testimony on that account alone.

(6) Surjit Singh and Darshan Singh have received gun shot injuries and there cannot be any doubt about their presence at the occurrence. Even according to the version of the accused, they were present. Having been taken through the evidence of these two witnesses, we are unable to find anything which would justify the rejection of their evidence. Both of them spoke to the details of the occurrence. They mentioned that Chhinda shot at Darshan Singh with a single-barrelled gun, that Baldev Singh shot at Surjit Singh with a 12 bore pistol and that Balkar Singh shot at Jit Singh with a double-barrelled gun. They stated that there was one electric light inside the liquor shop and one outside the liquor shop. Considerable argument was advanced by the learned counsel on the question whether there was any electric light either inside or outside the liquor shop. According to the learned counsel, the presence of the electric light was a later invention meant to facilitate the identification of the accused by the witnesses. There is no substance in this argument. We do not think that the liquor business was being carried on by the accused in darkness. They must have had some light inside and outside the shop. It is true that the shop of the accused did not have any direct electric connection and a meter, but as explained by the Patwari who was examined as P.W. 3, an electric connection to the liquor shop was taken from the shop of Bhajan Singh Mistri. In fact, according to one of the witnesses, none of the shops in that row had direct electric connection but all of them had electric connection from the shop of Bhajan Singh. The learned counsel drew our attention to the circumstance that the witnesses had not mentioned to the police about the presence of electric light either inside or outside the liquor shop. We do not think that any importance can be attached to such omissions. The witnesses obviously took the presence of the electric light as granted. So they did not make any mention about it in their statements to the police. As we have said earlier, the accused would not have carried on the liquor business without light. They must have had some light inside and outside the liquor shop. If every other shopkeeper in the row was having electric connection from Bhajan Singh's shop, it was most

likely that the accused followed suit. As owners of the liquor shop, though two of them were recent comers to the village Daulat Pur Dona, the accused must have become familiar to liquor customers such as Surjit Singh and Darshan Singh. There would not have been any difficulty in the witnesses' identifying those who fired the shots. It is not as if the firing was not preceded by an altercation. There was an exchange of words and abuses first and it was only thereafter that Jit Singh and the witnesses were shot. We do not think that the witnesses were under any handicap in identifying the respective assailants who shot at them and Jit Singh. The evidence of P.W. 6 was criticised on the ground that his house was almost 200 yards away and he was not likely to have been attracted by the noise of the altercation which took place at the liquor shop. We do not accept this submission either. The hour was 8 p.m. All the other shops in the row had been closed. The liquor shop was the only shop which was open. In the stillness of the evening, the noise of the altercation which must have been loud could well have carried a distance of about 200 yards. There was no special reason for P.W. 6 or P.W. 8 and P.W. 9 to implicate anyone of the accused. P.W. 6 gave a report to the police that very night and the fact that he gave a report that very night was not challenged in his cross-examination. The report contains the details of the occurrence and fully corroborates the evidence of the eye-witnesses. We have no hesitation in accepting the evidence of P.Ws. 6, 8 and 9, the three eye-witnesses.

(7) The learned counsel made a complaint about the non-examination of Bhajan Singh, the owner of the shop from where the electric connection was taken to the shop of the accused and Santokh Singh and others who came to the scene of occurrence soon after the incident. No oblique motive was suggested for their non-examination and we are satisfied that none existed. Nothing, therefore, turns on the non-examination of these witnesses. We may state here that no argument based on the defence version was advanced before us.

(8) The question that remains for consideration is the nature of the offences committed by the accused. The learned Sessions Judge thought that the accused did not share any common intention and therefore, that section 34, Indian Penal Code, was not attracted. There is no appeal by the State and so we refrain from going into the question of the applicability of section 34, Indian Penal Code. With regard to Balkar Singh, no argument was advanced that the offence did not amount to one under section 302, Indian Penal Code. With regard to Sarvinder Singh and Baldev Singh, it was argued by the

learned counsel on the basis of the decision of a Division Bench of this Court in *Gurmukh Singh and another* v. *The State of Punjab* (1), that the offences committed by them fell under section 324 Indian Penal Code. In that case, the learned Judges (Gopal Singh & Tewatia, JJ.) took the view that in considering the question whether an act of the accused amounted to an attempt to commit murder, the question of intention or knowledge was to be inferred from the result. They observed :—

> "The question of intention or knowledge is to be inferred from the result, if the act itself has been fully carried into 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 circumstances beyond the control of the appellant in spite of the act done by him being effective in causing the death."

(9) The correctness of these observations of the learned Judges was doubted by Gujral and Tewatia, JJ. when, in the present case, an application for bail was moved on behalf of the appellants. The learned Judges thought that the case should be decided by a Full Bench and that is how the matter came before us. It is interesting to note that Tewatia, J., was one of the Judges who decided *Gurmukh Singh and another* v. *The State of Punjab* ·

Section 307, Indian Penal Code, is as follows :—

> "Whoever 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, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

(1) 1973 Ch. L.R. 290.

and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death."

(10) Intention and knowledge are matters of inference, to be drawn from the entirety of the facts and circumstances of the case. The learned Judges who decided *Gurmukh Singh and another* v. *The State of Punjab*, appeared to think that where the act had taken effect, intention or knowledge must be inferred from the result only. If death was not the result of the executed act, the necessary intention or knowledge was not to be inferred and the offence would not be attempt to murder; the accused would only be guilty of causing the injuries actually inflicted. It is difficult to understand this process of reasoning. If the executed act results in death, the offence would be murder. There would be no question of an offence of attempt to murder. To say that intention or knowledge must be inferred from the result of the executed act would logically lead to the absurd conclusion that a man who fires a gun at his enemy with intent to kill but misses his aim would not be guilty of attempt to murder. This illogical result was pointed out by Beaumont, C.J., in *Wasudeo Balwant Gogte* v. *Emperor*, (2). Beaumont, C.J., dissented from the view expressed in *Reg.* v. *F. Cassidy* (3) and *Martu* v. *Emperor*, (4), to the effect that for a person to be convicted under section 307, Indian Penal Code, the act done must be an act done under such circumstances that death might be caused if the act took effect, that is to say, the act must be capable of causing death in the natural and ordinary course of things. Beaumont, C.J. observed as follows :—

"If the reasoning of the learned Judges in that case be right as to the construction of S. 307 and if the act committed by the accused must be an act capable of causing death in the ordinary course, it seems to me that logically the section could never have any effect at all. If an act is done which in fact does not cause death, it is impossible to say that precise act might have caused death. There must be some change in the act to produce a different result, and

(2) I.L.R. 56 Bomb. 434.
(3) 4 Bom. H.C. (Cr.) 17.
(4) 15 B.L.R. 991.

the extent to which the act done must be supposed to be varied to produce the hypothetical death referred to in S. 307 is merely a question of degree. If a man points at his enemy a gun which he believes to be loaded but which in fact is not loaded intending to commit murder (which is Cassidy's case), it is no doubt certain that no death will result from the act. But equally certain is it that no death will result if the accused fires a revolver at his enemy in such circumstances that, in fact, whether through defect of aim, or the activity of the target, the bullet and the intended victim will not meet. If, however, S. 307 does not cover the case of man who fires a gun at his enemy with intent to kill him but misses his aim, it is difficult to see how the section can ever have any operation."

Referring to the expression 'under such circumstances' occurring in S. 307, Beaumont, C.J., further observed as follows :—

"The words 'under such circumstances' refer to acts which would introduce a defence to a charge of murder, such as, for instance, that the accused was acting in self-defence or in the course of military duty. But if you have an act done with a sufficiency guilty intention and knowledge and in circumstances which do not from their nature afford a defence to a charge of murder, and if the act is of such a nature as would have caused death in the usual course of events but for something beyond the accused's control which prevented that result, then it seems to me that the case falls within S. 307."

(11) The observations of Beaumont, C.J., and his dissent from Cassidy's case were approved by the Supreme Court in *Om Parkash* v. *State of Punjab*, (5) and *Sarju Prasad* v. *State of Bihar*, (6). Referring to the facts in Gogte's case, the Supreme Court observed in Sarju Prasad's case as follows :—

"In Gogte's case, no injury was in fact occasioned to the victim Sir Earnest Hotson, the then Acting Governor, due to a certain obstruction. Even so, the assailant Gogte was held by the Court to be liable under S. 307 because his act of firing a shot was committed with a guilty intention and

(5) A.I.R. 1961 S.C. 1782.
(6) A.I.R. 1965 S.C. 843.

knowledge and in such circumstances that but for the intervening fact it would have amounted to murder in the normal course of events. This view was approved by this Court. Therefore, the mere fact that the injury actually inflicted by the appellant did not cut any vital organ of Shankar Prasad is not by itself sufficient to take the act out of the purview of S. 307."

(12) In our opinion, intention or knowledge is not to be measured by the consequence. It has to be gathered from all the surrounding facts and circumstances. If an act is done with the intention or knowledge requisite for the commission of the offence of murder, and, if there are no circumstances introducing a defence to a charge of murder either by way of a general or a special exception, the offence would be attempt to murder, if the act does not result in death, whatever be the reason for the act not resulting in death, whatever be the nature of the injuries, and even if no injuries are caused. The requisite intention or knowledge is not to be excluded from the mere fact that death is not the consequence of the act. Such an act may not result in death for a variety of reasons, such as, the ineffectiveness of the weapon, the ineffectiveness of the assailant, the movement of the victim, the intervention of a sudden obstruction etc. It is true that the mere act of firing a gun need not necessarily lead to the inference of the requisite intention or knowledge necessary to make the offence one of murder. A person may fire a gun in the air intending to frighten someone, a person may aim and shoot at some one's legs intending to cause injury to the leg, a person may discharge a gun from a distance of 300 yards knowing that the maximum range of the gun is 30 yards. In such or similar situations, one may not draw the inference of the requisite intention or knowledge for the commission of the offence of murder. But, if a person shoots at another at a sufficiently close range or if a person fires a loaded cannon at a crowd of persons, the requisite intention or knowledge can be readily inferred. Such an intention or knowledge cannot be refused to be inferred merely because the act does not result in the death of any one either because the weapon is defective or because the powder is wet or the pellets too small, or because only a few pellets strike the victim, the aim of the assailants being poor, or because the victim is so lucky that no vital portion of the body is injured or expert medical attention available on the spot saves his life and so on. We, therefore, overrule the observations of the Division Bench in *Gurmukh Singh and another* v. *The State of Punjab*.

(13) In the case before us, Jit Singh charged the accused with selling adulterated liquor. There was an altercation. Surjit Singh and Darshan Singh tried to intervene. The accused opened fire, each shooting one. Balkar Singh shot at Jit Singh from a very close range. Chhinda and Baldev Singh did not shoot from such a close range. They shot from a range of about 40 to 50 feet, by no means too long a range. The injuries caused to Surjit Singh and Darshan Singh were no doubt simple but that was not because the accused meant to cause only simple injuries. Surely, the accused did not calculate the distance from which they were shooting and shot at the victims only after satisfying themselves that they could shoot safely without killing. We are satisfied, on a consideration of the material circumstances, that each of the accused intended to cause death when he opened fire. The convictions are, therefore, correct. The appeals are dismissed.

(14) In the criminal revision case, the learned counsel for Kartar Singh requested that we should make an order for payment of compensation by the accused to the dependents of the deceased Jit Singh. Section 357(4) of the Code of Criminal Procedure enables an appellate Court or a revisional Court to make an order of compensation even as a trial Court could under section 357(1) and (3). Of course, the appellate Court or the revisional Court will not make such an order without notice to the accused. In the present case, notice of the criminal revision application filed by P.W. 6 had not been previously issued to the accused. The result is that we have now no material before us as to who are the dependents of the deceased, what the means of living of the deceased were, how much he was earning, what the means of the accused are to pay compensation and what amount of compensation may suitably be awarded to the dependants of the deceased. The quantum of compensation cannot be properly determined in the absence of the relevant material. We have none before us. We do not think that we would be justified in issuing notice to the accused at this late stage and embark into an enquiry on all these matters. We, therefore, dismiss the revision application. But, we wish to point out that it is desirable that the trial Court, in all appropriate cases, should consider the question of award of compensation at the time of passing the sentence. The accused should be questioned and necessary evidence may be taken upon matters relevant to the award of compensation. While a criminal Court should not convert itself into a civil Court for the purpose of assessing compensation, the social purpose intended to be

served by section 357 should not be ignored and criminal courts should not shirk the question of determination of compensation and proceed on the assumption that award of compensation is not a true concern of the criminal law.

Bhopinder Singh Dhillon, J.—I agree.

M. R. Sharma, J.—I also agree.

N.K.S.

FULL BENCH

CIVIL MISCELLANEOUS

Before O. Chinnappa Reddy, B. S. Dhillon and Surinder Singh, JJ.

ARJUN SINGH NEGI,—*Petitioner.*

versus

THE UNION OF INDIA, ETC.,—*Respondents.*

Civil Writ Petition No. 30 of 1976.

September 15, 1976.

Natural Justice—Departmental Promotion Committee screening the cases of all eligible candidates for promotion to a higher post—Such candidates—Whether entitled to be heard.

Held, that the principles of natural justice are easy to proclaim but their precise extent is far less easy to define. One of the essential elements of the principles of natural justice is *audi alteram partem*, i.e., both sides shall be heard. However, the application of this principle is attracted to a case where there are two opposing parties to a controversy. There are really no two contesting parties before the Departmental Promotion Committee when it is seized of the matter regarding promotion to a higher post on a regular basis. The Departmental Promotion Committee is to consider the matter of promotion for the purpose of filling a certain post and is called upon to review not only the seniority but also the qualifications, experience, work and conduct of all the eligible candidates for the purpose of a comparative assessment. The Committee is not to confine itself to a dispute between two candidates or for the matter of that, between the candidates inter-se. Before such a Committee there is no such dispute for the decision of which it is necessary to lend ears to the contesting parties. The principle of *audi alteram partem* is, therefore