

KSHAN – 2020

15th NATIONAL TRIAL AND APPELLATE MOOT COURT COMPETITION

13th to 15th MARCH 2020

MOOT PROBLEM

G. H. RAISONI LAW COLLEGE, NAGPUR

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STATEMENT OF FACTS

1. On 06/01/2020, at Plot no. 99 HB estate, Shankar Nagar, Mr. Mahesh Muley (deceased) was levelling the land, with the help of a JCB bearing No. MH-31- FA- 9671. That, the said land is owned by the brother of accused namely Mr. Tanmay Joshi and the brother of accused had entered into a land development agreement with the complainant i.e. Mr. Aditya Agrawal. Mr. Aditya Agrawal is the builder and it is since last 2 years, he was carrying out the work at Shankarnagar.

2. The accused namely Mr. Varun Joshi on 06/01/2020, at around 12 noon came to the said land and threatened the complainant by pointing gun at him. Thereafter, Mr. Varun Joshi pointed the gun at JCB driver Mr. Mahesh Muley and fired a bullet at him with his pistol gun which hit the driver on his head. The deceased got a fire arm injury on his forehead. The case of the prosecution is that the accused murdered the JCB driver. It is on that pretext Offence came to be registered under Section 302, 506(b) of IPC and under Section 7, 27(3) of the Arms Act, against the accused on the basis of report lodged by the complainant.

3. The police machinery reached the spot and consequently the panchnama was prepared, the statements of eye witnesses were recorded and the items seized were sent for chemical analysis. The deceased was immediately sent to the hospital and after some time it was informed that the deceased has succumbed to the injury. The accused was present at the spot with the revolver and was arrested at the spot where the incident took place. The post-mortem report disclosed the cause of death as being caused due to fire arm injury.

4. The basis for the case of the prosecution is that the accused person had the intention to kill the deceased, it is a specific case of the Prosecution that the accused had the requisite mens rea which led to the murder of the deceased. It is the defence of the accused that there was some prior litigation, which was pending in respect of the site where the incident took place and also the intention to kill was missing as according to the accused since the deceased moved the JCB machine towards him and he feared for his life, when he was moving back he lost his balance and which triggered the firing.

5. The investigation came to be completed and charge-sheet came to be filed in the Court of Addl. Chief Judicial Magistrate, Nagpur. The court of Addl. Chief Judicial Magistrate, Nagpur committed the case to Sessions Court for trial as the offence punishable under Section 302 is exclusively triable by the Court of Sessions.

FIRST INFORMATION REPORT

(Under Section 154 Cr.P.C.)

1. **District** - Nagpur **P.S.** - Pratap Nagar **Year** - 2020
Crime No. 101 **Date** - 06/1/2020

2.	Sr. No	Acts	Sections
	1	Indian Penal Code , 1860	302
	2	Indian Penal Code , 1860	506(b)
	3	Arms Act,1959	7
	4	Arms Act,1959	27(3)

3.(a) **Occurrence of Offence:**

Day: Monday **Date from:** 06/01/2020 **Date To:** 06/01/2020
Time Period: **Time from:** 12:45 **Time To:**

(b) **Information received at P.S.**

Date : 06/1/2020 **Time :** 3:00 p.m

(c) **General Diary Reference :**

Entry No. : 15 **Time :** 3:00 p.m

4. **Type of Information :** Oral

5. **Place of Occurrence:**

- (a) **Direction & Distance from P.S. :** 4 km in the north
Beat No.:

(b) **Address :** Plot No. 99, HB Estate, Nagpur

- (c) **In case, outside the limit of this Police Station, then:**

Name of P.S.: **District (State):**

6. **Complainant/Informant :**

- (a) **Name** : Aditya s/o Ram Agarwal
(b) **Father's Name** : Ram Agarwal
(c) **Date/Year of Birth** : 04/04/1975
(d) **Nationality**: Indian
(e) **UID No.:**
(f) **Passport No.:**
Date of Issue:
Place of Issue:
(g) **Occupation:**
(h) **Address:**

Sr. No.	Address Type	Address
1.	Present Address	Plot 54, Vahane Layout, Pratap Nagar

- (i) **Phone number** : **Mobile** :
7. **Details of known/suspected/unknown accused with full particulars**

S.No.	Name	Alias	Relative's Name	Address
1.	Varun Joshi			Plot 35, Shankar Nagar , Nagpur

8. **Reasons for delay in reporting by the complainant/Informant:**

9. **Particulars of properties of interest:**

S.No.	Property Type	Sub Type	Value (in Rs.)

10. **Total value of property stolen (In Rs/-):**

F.I.R. read over to the complainant / informant, admitted to be correctly recorded and a copy given to the complainant/informant free of cost. R.O.A.C.

14. Signature/Thumb impression of the complainant/informant
15. Date and time of dispatch to the court: 07/01/2020

Signature of Officer in charge,
Police Station

ORAL REPORT

P.S. Pratap Nagar

Dt. 06/01/2020

Name : Aditya Agarwal

I am filing the complaint before the Pratap Nagar P.S., Nagpur. I am a partner in a partnership firm named and styled as VSJ Associates, which deals in the business of developing lands, having its registered office at Shivaji Nagar, Nagpur. Mr. Harshwardhan Agarwal is also a partner in the said partnership firm.

We had entered into a land development agreement with Mr. Tanmay Joshi, R/o. Plot No 35, Shankar Nagar, for the purpose of developing a land bearing Khasara No.60/3 belonging to said Mr. Tanmay Joshi and accordingly we are constructing apartment/flat scheme named and styled as Rakul Apartments on the said land since last two years. During these two years, the younger brother of Mr. Tanmay Joshi i.e Mr. Varun Joshi, used to visit the said construction site and used to abuse the employees of our company stating that the said land belongs to him and his family and only he will develop the said land as he is also a builder, and he also threatened us that, “if you don't stop the work then you will have to face dire consequences.” The said Mr. Varun Joshi has also mounted a board, on the said construction site which misled the consumers. Further, on 12/12/2019 we entered into a land development agreement, regarding the land adjacent to the above-mentioned land, with Mr. Tanmay Joshi and accordingly started cleaning and levelling the said land. That, for the purpose of levelling the said land, I had rented a JCB from Mr. Irfan Dalal, but Mr. Varun Joshi created an obstruction by illegally fencing on the approach

road and prevented us from going to the construction site. He also threatened us by saying that “He will see from which road the material will be taken.” Thus, through Mr. Tanmay Joshi, I approached his sister namely Mrs. Savitri Nene, who also owns a land adjacent to the construction site and took her permission to use her land for the purpose of going to the construction site. For the purpose of levelling the land on the said construction site, today I had brought the JCB.

Today, on 06/01/2020 at about 12:00 noon, when I reached at the construction site, Mr. Mahesh Muley was already present there along with a JCB bearing no.MH-31-FA- 9671. First, we levelled a space for the road on the land of Mrs Savitri Nene and thereafter we started levelling the land on the construction site, at that time Mr Prateek Shah and Mr. Kunal Bhatt who are the engineers in our company and supervisor of our company. That, at around 12:30pm, Mr. Varun Joshi came there and created ruckus. I along with said engineers and supervisor of our company approached Mr. Varun Joshi and asked him to speak to his brother and sister as they have permitted us for carrying out the construction work on the said land. At that time, he pulled out a gun from his waist and pointed it at me and he threatened me to kill if we do not stop the work and vacate the said land. Thereafter, he pointed his gun at JCB driver and asked him to turn off the engine of JCB and thereafter within a fraction of a second, Mr Varun Joshi fired a bullet at Mr. Mahesh Muley from the distance of about 5 feet from the front side of JCB. Immediately thereafter, I along with the other people present at the site ran towards JCB to save Mr. Mahesh Muley. We pulled his wounded body out of the cabin of JCB and sent him to the Medical College along with Mr. Vijay Kumar in Scorpio Car and rest of us stayed at the place of incident. Mr. Varun Joshi was also standing there.

Thereafter, I called at P.S. Pratap Nagar, and informed him about the said incident. Thereafter, within 10 minutes, police staff reached there and arrested Mr Varun Joshi and also, confiscated his gun.

Mr. Varun Joshi had disputes in respect of the said land with his brother. Mr.Varun Joshi did not give the said land to Mr. Aditya Agarwal for development and thus, resentfully he pointed gun at me and threatened me to kill and thereafter pointed the gun at JCB driver Mr. Mahesh Muley and killed him by firing a bullet at his head.

This is my only complaint. I have read the contents of the instant complaint and it is drafted as I have narrated.

Before:
Signature
Sd/-

That, today on Dt.06/01/2020, at around 15:00 hours, duty officer, Dilawar Singh, PS Pratap Nagar, registered offence under Section 302 and 506(b) of Indian Penal Code and under section 7,27(3) of the Arms Act against the accused on the basis of the above complaint filed by the complainant.

POST MORTEM REPORT

Memorandum of a post-mortem examination held at Government Hospital Nagpur,

On the body of : Mr. Mahesh Muley

District : Nagpur

A. GENERAL PARTICULARS

- | | |
|--|---|
| 1. (a) By whom was the corpus brought? | Police Station Pratap Nagar |
| (b) Name of the place from which sent | Pratap Nagar |
| (c) Distance of place from which sent | 3 Kms. |
| 2. By whom identified? | Mr. Aditya Agrawal |
| 3. The date, hour and minute when received? | 06/01/2020 at about 1:30 p.m. |
| (a) The date, hour and minute of conducting Post-Mortem examination. | 06/01/2020 at about 1.40 p.m. |
| (b) The date hour and minute of ending Post-Mortem examination. | 06/01/2020 at about 3.30 p.m. |
| 4. Substance of accompanying Report from Police Officer Or Magistrate, together with The date of death if known Supposed cause of death or reason for examination. | Date of death – 06/01/2020 at about 1.10 p.m. |
| Cause of death | Due to firearm injury on the head. |

B. External Examination

- | | |
|---------------------|----------------|
| 5. Sex apparent age | Male, 32 years |
|---------------------|----------------|

Description of clothes and ornament on the body	Jeans and T-shirt
6. Condition of clothes Whether wet with water, stained with blood or so lad with vomit.	Stained with blood
7. Special marks on the skin such as scars, tattoo etc. Any information or other marks of identification State of teeth In newly born infants the length and (if possible)the weight of the hair, nails and ambalical cord its length whether placenta is attached or not, is present its size and conditions.	Scars on forehead
8. CONDITION OF BODY	
Whether well nourished thin, emocoited, warm or cold.	Moderately Built
9. Rigor Mortis well marked, slight or absent, whether present in the whole body or part only.	Rigors Mortis present all over the body
10. Extent and signs of decomposition presence Post-Mortem liquidity of buttocks joins back and thighs on any other part.	No signs of decomposition.
11. Feature, whether swollen, state of eyes position of tongue nature or fluid if any oozing from mouth, nostrils or ear.	NA

12. Condition of skin marks of blood etc. In suspected drowning the presence
- NA
13. Injuries to external genitals indication of purging
- No Injury
14. Position of limbs especially of arms and of fingers in suspected drowning the presence or absence of sand or earth within the nails or on the skin of hands and feet.
15. Surface wounds and injuries their nature position dimensions (measured) and directions to be accurately stated their probable age and causes to be noted.
- Fire Arm Injury
16. Other injuries discovered by external examination or palpation, such as fractures
a. Can you say definitely the injuries shown against serial no. 15 and 16 are ante mortem injuries.
- Yes, ante mortem
- C. Internal Examination
17. Head
(i) Injuries under the scalp, their nature
- Yes

(ii) Skull -Vault Base describe fractures theirs dimensions, directions etc.	N/A
(iii) Brain: The appearance of its recovering Size weight and general condition of the Organ itself and any abnormality founding Its examination to be carefully noted.	N/A
18. Thorax-	Intact
(a) Wall, ribs cartilages	
(b) Plevao	Intact
(c) Larynx Traches and Bronchi	Intact Intact
(d) Right lung	Intact
(e) Left lung	Intact
(f) Pericardium	Intact
(g) Heart with Weight	Intact
(h) Large Vessels	Intact
Additional Remarks	
19. Abdomen :	Intact
Walls	Intact
Perioneum Cavity	Intact
Buccal Cavity	Intact
Teeth, tongue and pharynx	Intact

Oesophagus

Stomach and its contents
particle present Small intestine and its contents Intact

Large intestine and its contents Intact

Liver (with weight) and gall bladder Intact

Pancreas and Suprarenalf Intact

Spleen with weight

Kidneys with weight Intact

Bladder NIL

Organs of generation

Additional remarks with where possible medical officer's deduction from the state of contents of stomach as to the time of death and last meal. NIL

State which viscera (if and) have been retention and also quote the numbers on the bottle containing the same Due to fire arm injury on head.

20. Spine and Spinal Cord
Opinion as of the cause
Probable cause of death

Date:

Sd/-

Place: Government Hospital, Nagpur

(Signature)

Forwarded to Police Sub-Inspector, Police Station, Pratap Nagar

For information with reference to his No.

2. Viscera has been preserved it may please be stated immediately whether examination by the chemical analyzer is necessary or to be destroyed.

Viscera not present, blood samples and chemical analysis

Civil Surgeon or
MMS Officer

CHEMICAL ANALYZER REPORT DATED:10/01/2020

**REGIONAL FORENSIC SCIENCE LABORATORY,
STATE OF MAHARASHTRA, HOME DEPARTMENT,
DHANTOLI, NAGPUR 440012
TEL NO.XXXX FAX NO. XXXX
EXAMINATION REPORT**

M.L. Case No. BLn 150/20
Vide BLn 149/20, BLn 151/20
No. N(T) 1287/20
Date:10/ 01/2020
Total number of pages: 3

To,
The Senior Police Inspector,
Dept. of Forensic Medicine,
Govt. Medical College, Nagpur.
Dist. Nagpur.

- 1) Ref. No.303/20 Date: 06/01/2020
2) No. of Exhibit received: Four P.S. Pratap Nagar, Dist. Nagpur
u/s 302,506 (b) IPC
r/w 27(3),7 Arms Act.
3) C.R.No. 101/20
4) Mode of receipt: By P.C. No. Date of receipt :-

5) **Conditions of parcel(s)/ Seals(s)**

-----Three sealed envelopes, one sealed plastic jar, two sealed small plastic jars and three sealed parcels, seals intact and as per copy sent--

6) **Description of articles contained in parcel:**

Exhibit No.1: - One six chambered 32” revolver having body no. NP A-3044/ 05 and markings NP MPF 32” MK-1 put in a plastic jar marked Ex. No. 8.

Exhibit No.2: - Three intact KF. 32” S&WL revolver cartridges put in a small plastic jar marked Ex. No. 9.

Exhibit No. 3: - One KF.32” S&WL revolver empty having indentation on the cap put in a small plastic jar marked Exh. No.10.

Exhibit No. 4: - One glass sheet of size 103 cm X 78 cm wrapped in paper marked Exh. No. 11.

Exhibit No. 5:- Earth in polythene put in an envelope marked Exh. No. 1.

Exhibit No. 6:- Earth in polythene put in an envelope marked Exh. No. 2.

Exhibit No. 7:- Cotton swab in polythene put in an envelope marked Exh. No. 3.

Exhibit No. 8:- Full open shirt.

Exhibit No. 9:- Full pant with leather belt.

Exhibit No. 10:- Vest.

Exhibit No. 11:- Underwear.

(Exhibit 8 to exhibit 11 together wrapped in paper marked Exh. No.-4)

Exhibit No. 12:- Half bush shirt.

Exhibit No. 13:- Full Pant.

(Exhibit 12 and exhibit 13 together wrapped in paper marked Exh. No.-5)

(Exhibit 1 to exhibit 13 also having labelled at Pratap Nagar Police Station, C.R. No. 101/20 u/s 302, 506 (B) IPC r/w 3/27 Arms Act. Etc.)

RESULTS OF ANALYSIS

Exhibit 1 is a six chambered 32” caliber revolver in working conditions. Residue of fired ammunition-nitrite was detected in the barrel washings of exhibit 1, showing that the revolver was used for firing prior to its receipt in the laboratory.

Three.32” revolver cartridges from exhibit 2 were found to be live on test firing through the .32” revolver exhibit 1.

The empty in exhibit 3 is a fired.32” revolver cartridge case. The characteristics features of the firing pin impressions and the breech face marks examined under comparison microscope on the empty in exhibit 3 tally with those on the .32” revolver cartridges test fired through the .32” revolver exhibit 1, showing that the .32” revolver empty in exhibit 3 has been fired through the .32” revolver exhibit 1.

Detection of metallic lead in absence of blackening and powder residues around the periphery of shot hole on the glass sheet in exhibit 3 is consistent with the passage of lead bullet having been fired from beyond the powder range of the weapon.

Shot hole was not observed on clothes in exhibit 8 to exhibit 13.

The deformed .32” revolver lead bullet in exhibit 1 of BLn 149/20 (bullet retrieved from the body of deceased Mahesh Muley vide MLPM No. NKT 1166/20. Dt. 06/01/20) tally with the bullets resulted from the test firing of .32” revolver exhibit 1 of the present case in respects of numbers of land and groove and their corresponding widths, the direction and extent of twist of riflings and the characteristics striations examined under comparison microscope observed in the land and groove comparison microscope observed in the land and groove impressions, showing that the .32” revolver bullet in exhibit 1 of BLn -149/20 has been fired through the .32” revolver exhibit 1 present case.

Analysis started on 07/01/2020
Analysis completed on 10/01/2020

Analyzed by Satish Churad
Name:
Designation:

Sd/-
Assistant Chemical Analyzer
Regional Forensic Science
Laboratory, State of Maharashtra,
Nagpur.

Note: 1) Results related only to the exhibits tested.
2) After examination,
a) Biological exhibits will be disposed off.
b) The blood examination report from biology division vide RFSL Nagpur M.L. Case No. Bn 215/2020 will follow.

CHEMICAL ANALYZER REPORT DATED 12/01/2020

REGIONAL FORENSIC SCIENCE LABORATORY,
STATE OF MAHARASHTRA, HOME DEPARTMENT,
DHANTOLI, NAGPUR.

EXAMINATION REPORT

M.L. Case No. BLn 149/20
Vide BLn 150/20, BLn 151/20
No. N(T) 1287-88/20
Date: 12/01/2020
Total number of pages: 2

To,
The Lecturer,
Dept. of Forensic Medicine,
Govt. Medical College, Nagpur.
Dist. Nagpur.

- 7) Ref. No. 301/20
8) No. of Exhibit received: Four
9) C.R.No. 101/20
10) Mode of receipt: By P.C. No.5050
- Date:
P.S. Pratap Nagar, Dist. Nagpur
u/s 302,506 (b) IPC
r/w 27(3) ,7 Arms Act.
Date of receipt
10/01/2020

11) **Conditions of parcel(s)/ Seals(s)**

Three sealed small plastic bottles and one sealed envelope,
seals intact and as per copy sent.

12) **Description of articles contained in parcel:**

Exhibit No.1: - One deformed lead bullet having rifling marks
put in small plastic bottle labelled bullet.

Exhibit No.2: - Skin piece on cardboard put in an envelope
labelled skin from entrance wound.

Exhibit No. 3: - Bone piece in small plastic bottle labelled
pieces of bone from bullet track.

Exhibit No. 4: - Cotton swab in a small plastic bottle labelled
gauze piece swab from entry wound.

RESULTS OF ANALYSIS

The deformed lead bullet in exhibit 1 is a fired 32” calibre revolver bullet.

Detection of metallic lead on the skin piece in exhibit 2 and bone pieces in exhibit 3 are consistent with passage/impact of fired lead bullet.

In absence of control samples, the results of analysis in relevance to the detection of the fired gunshot residues on the cotton swabs in exhibit 4 are inconclusive.

Analysis started on 10/01/2020

Analysis completed on 12/1/2020

Analyzed by : Pawan Churad

Name : Pawan Churad
Designation: Assistant
Chemical Analyzer

Sd/-
Assistant Chemical Analyzer
Regional Forensic Science
Laboratory, State of Maharashtra,
Nagpur.

Copy of the report is forwarded to : The Sr. Police Inspector,
Pratap Nagar, Police Station, Nagpur.

Note:

- 1) Results related only to the exhibits tested.
- 2) After examination,
 - c) Biological exhibits will be disposed off.
 - d) The blood examination report from biology division vide RFSL Nagpur M.L. Case No. Bn 215/2020 will follow.

Statements of the Witnesses
(As per Section 161 of Cr.PC.)

Prosecution Witness No. 1 (PW-1)

My name is :- Aditya Agarwal, aged about 45 years, Occupation – Construction Business, Residence :-Pratap Nagar, District :- Nagpur

The name of my firm is VSJ Associates. The incident took place on 06.01.2020, that day, I was present at the plot. I have an agreement of development of plot with Tanmay Joshi. That day, all the regular employees were present on plot. Mr. Prateek Shah, my friend was also present there. That day, plot-levelling work was in progress. The brother of Tanmay i.e. the accused Varun Joshi, Pravin Borkute came there. He told us to stop the work. The work of the plot levelling was going on through JCB. We told him that we had entered into an agreement with his brother. The JCB was brought there from the back-side plot of the sister of the accused as there was no way to come on the plot from the front side. We did not stop our work. The JCB was brought on rent on hourly basis. The accused then made some phone calls and told us that police were coming to the spot. However, we did not stop our work. The accused then went in front of the JCB and told the person who was operating the JCB to stop the work. The accused took out the revolver. There was a barbed wire fencing in between this plot and the plot of the accused. I told the JCB operator to break the barbed wire fencing. The JCB was going ahead and therefore the accused was moving back. The accused lost his balance and then we heard the noise of firing of the revolver. We then removed the JCB operator from JCB, he was injured. The deceased was then taken to the Hospital. The Police machinery came to the spot and arrested the accused. Thereafter, I was called at the police station to give report. I have given the oral report to the Police Station. I say that the accused is responsible for the death of Mr. Mahesh Muley.

Sessions Case No. 524/2020

Prosecution Witness No. 2 (PW 2)

My name is :- Prateek s/o Pravin Shah , aged about 43 years,
Occupation – Civil Engineer, Residence :- Shivaji Nagar, District :-
Nagpur

I am working as a Civil Engineer and Liaisoning Executive in VSJ Pvt. Ltd. since last 5 years. I know Mr. Varun Joshi since quite some time and he has been time to time creating obstacles in carrying out the work at the spot. On 06.01.2020, at about 12.30 p.m. I was present at VSJ Associates, Project Site i.e HB Estate. I saw the accused with a revolver and in the fit of rage he fired at Mr. Mahesh Muley. For no reason whatsoever Mr. Mahesh Muley had to pay the price for the dispute between Mr. Aditya Agrawal and the Joshi family.

We immediately rushed to the JCB where Mahesh was lying down and took him to the Hospital. Police also reached there after some time and arrested the accused. While I was present there the police seized one pistol from Mr. Varun Joshi. The police also took samples of blood on the glass of JCB machine and the blood which was on the soil. Then the police took my signatures on these samples which were collected. On one side of the spot, there was a road and a flyover, to the other side there was Joshi's layout. On the backside of said plot there was a flat scheme. The police also prepared a panchanama and took my signatures. Mr. Varun Joshi was arrested by the police in my presence and a black pistol was also seized from him. Police had also seized three live cartridges and one empty case. Police had also seized shirt and pant from the accused Varun.

Defence Witness

(The statements are created only for the purpose of the moot problem and to train the witnesses, the teams are at liberty to create their own defences in addition to the statements provided below and accordingly lead evidence to that effect)

Defence Witness No. 1 (DW.1)

My name is :- Kunal Bhatt, aged about 43 years, Occupation – Civil Engineer ,Residence :-Ram Nagar , District :- Nagpur

I work with VSJ Associates, as Civil Engineer since last 6 years. I know Mr. Mahesh Muley, Mr. Aditya Agrawal and Mr. Varun Joshi. There is a Civil Suit filed by Mr. Varun Joshi against Mr. Aditya Agrawal regarding the present site.

On 06.01.2020, I reached the site at around 10:00 am. Mr. Aditya Agrawal reached there at around 12:00 noon. At around 12:30 pm, I had seen the accused, Mr. Varun Joshi, at the spot of incident. It so happened that there were alterations between Mr. Aditya Agarwal and Varun Joshi, and thereafter Mr. Varun Joshi pointed gun towards the Mr. Mahesh Muley, as he moved the JCB machine towards Varun and Varun feared for his life, when he was moving back he lost his balance and which triggered the firing. I say that if Mr. Varun Joshi did not fire the gun at Mr. Mahesh Mule, the J.C.B. would have hit him and in all probability killed him. It is, thereafter, we rushed towards Mr. Mahesh Muley, ambulance was called, the police reached the spot and arrested Mr. Varun Joshi. Mr. Varun Joshi is falsely prosecuted, and he did not have any intention to kill Mr. Mahesh Muley.

JUDGEMENT

(Delivered on this day of 08/03/2020)

The accused is charged for the offences punishable U/s. 302, 506(b) of the Indian Penal Code (hereinafter referred to as “IPC”) and Section 7 R/w Section 27(3) of the Arms Act.

The factual matrix of the case is as follows:-

1. Complainant, Aditya Agarwal is a builder by profession having his business under the name and Style: “VSJ Associates” Shivaji Nagar, Nagpur. He had entered into a development agreement with the brother of the accused, Tanmay Joshi, R/o Shankar Nagar in respect of development and construction of flat scheme on Kh. No. 60/3K and since the last 2 years the work was in progress. It is alleged that the accused was also builder and he threatened the complainant that the said site belongs to him and his family and complainant cannot construct over it.

2. At about 12.45 p.m, on 06/01/2020, the accused came on the site and asked complainant and his team to stop the work. However, they did not stop the work. It is alleged that the accused then took out revolver and pointed it towards the complainant and warned him to leave the site or else he will fire the revolver. He also threatened to the JCB operator to stop the work and came in front of the JCB and fired the revolver at the JCB operator. As a result, after breaking the wind screen of JCB, the operator received the fire arm injury on his forehead. At the relevant time, the deceased Mr. Mahesh Muley was operating the JCB and sustained injury. He was immediately sent to the Government Medical College and Hospital, Nagpur. The complainant informed the police, pursuant to which, the police came

to the spot. The accused was present there with revolver. The deceased died due to injury caused by fire arm. The complainant then narrated the aforesaid facts and accordingly his report was recorded. Thereupon, Crime No.101/2020 was registered.

3. The spot panchanama was prepared and from the spot pieces of wind screen glass of JCB were seized. The accused was arrested and from his possession revolver with cartridges were seized under panchanama. The inquest panchanama was drawn. The pant and shirt of the accused were also seized, the blood samples and hand wash of the accused were seized under panchanama. The post-mortem report of the deceased was collected and the cause of death is “brain injury due to firearm”. The house of the accused was searched and in search the license of the revolver was seized also a Swift Car No. MH-31-AV -1234 was seized from accused. The statement of the witnesses were recorded. The seized property was sent to Chemical Analyser. On completing investigation prosecuted the accused for the said offences by presenting charge-sheet in the Court of ACJM, Nagpur. Since the alleged offences are exclusively triable by this Court the case was committed to this Court for trial.

4. The charge for the said offence was framed. It was read over and explained to the accused to which he pleaded not guilty and claimed to be tried. His defence is that of total denial that he had no intention to cause the death of JCB driver he fired from his revolver. It is his defence that the shot was accidentally fired after he lost his balance while he was requesting the JCB operator to stop the JCB. The statement of the accused U/s. 313 of Cr.P.C. were recorded.

POINTS :

1) Does the prosecution prove that on 06/01/2020, at 12.45 hrs, the accused with intention or knowledge to cause death of Mahesh Muley fired bullet shot on his forehead thereby caused his death and thus committed offence of murder?

.....In the affirmative

2) Does the prosecution prove that on the aforesaid date, time and place, the accused committed criminal intimidation by threatening the deceased, complainant and company employees, who were there to cause their death by a revolver?

.....In the affirmative

3) Does the prosecution prove that on the aforesaid date, time and place, the accused were found in possession of the revolver in contravention of Section 7 and U/s. 27(3) of the Arms Act?

.....In the affirmative

4) What Order?

.....As per final order

REASONS

5. In the order to prove the alleged offences the prosecution has examined its witnesses.

AS TO POINTS NO. 1 TO 3

6. According to the complainant, the accused came in front of JCB and told the JCB operator to stop the work. He took out revolver. According to him there was a barbed wire fencing in between this plot and plot of the accused. Therefore, he told the JCB

operator to break the wire fencing. JCB operator was going ahead and therefore, the accused was moving back. He lost his balance and then they heard the sound of firing of revolver. The JCB operator was injured and was sent to the Government Medical College and Hospital. The complainant then lodged the report.

7. Thus, in view of these it is argued on behalf of the accused that the shot was accidentally fired from the revolver of the accused as he lost balance, JCB was moving ahead and he was moving back, as a result, he lost balance. Therefore, according to him, the present accidental act of the accused falls under the General exceptions of IPC. According to him, he was doing lawful act. The complainant in spite of his requests did not stop the levelling work and directed JCB operator to break the wire fencing. The case of the defence is that the revolver was fired accidentally and, therefore, considering the preponderance of probabilities the case of the accused falls under this exception. It is their contention that the accused lost his balance, as a result, accidentally the revolver was fired and it hit the JCB operator after breaking the wind screen of JCB. Therefore, there was no guilty mind of the accused, there was no intention and mens rea was absent. The accused also came up with a defence that holding the gun and pointing it towards the J.D.B. operator and consequently seizure of the same from the accused by itself cannot establish or knowledge in causing death.

8. The defence in order to substantiate their stand that accidentally revolver was fired, has stated that he lost balance and he aimed revolver at the leg of the operator, and it was fired. Thus, he lost balance first and then he aimed at the JCB driver with the revolver. Thereafter, it is to be seen whether the revolver was accidentally fired, or he fired it. Thus, in view of this fact and

material brought on record the alleged act of the accused cannot be termed as done by accident or misfortune without any criminal intention or knowledge falling under the general exceptions 80 of IPC.

9. Considering the evidence brought on record by the prosecution that the accused rushed to the spot carrying revolver with him. He threatened the complainant and other persons, who were at the spot to stop the work. Though the complainant told JCB operator to go ahead and break the wire fencing the provocation was not given by JCB operator. He pointed the revolver towards the JCB operator, who was sitting in his cabin and therefore it was clear intention to kill him by causing firearm injury. Thus, the said act cannot be accepted as an accidental act. On the contrary, considering the entire material it was done with the intention to cause death or he was aware that he would cause such bodily injury as was sufficient in ordinary course of nature to cause his death. At the most, in order to prevent the JCB operator he should have fired bullet in air or on the body of the JCB. However, no such attempt was made by him to prevent him to stop the work. He pointed the revolver and accurately fired on his forehead, as a result, sustained brain injury and died. Thus, considering the evidence, as discussed above, I am of the opinion that the prosecution has proved that the accused with intention to commit murder of JCB operator fired revolver and killed him.

10. He entered that site with a revolver and threatened to the complainant and others by pointing revolver. Therefore, the prosecution has proved offence U/s. 506(B) of IPC also. The offence U/s. 7 of the Arms Act is made out. In view of the aforesaid discussion the prosecution has proved the offences U/s. 302 & 506(b) of IPC against the accused beyond all reasonable doubt. I, therefore, answer these points accordingly.

11. Since the accused is held guilty of above offences, on the point of sentence, I heard the learned APP and the defence counsel. Considering the facts and circumstances of the case, as discussed above, this is not the rarest of rare cases wherein death penalty is the only adequate punishment. Hence, I pass the following order.

ORDER

- a. Accused Varun Joshi is found guilty under section 302 & 506(b) of the Indian Penal Code.
- b. The accused is convicted for the offence punishable under section 302 & 506(b) of the Indian Penal Code, and also Section 7 R/w. Section 27 (3) of the Arms Act and sentenced to suffer imprisonment for life and to pay a fine of Rs. 25,000/-, in default to suffer Rigorous imprisonment for one year.
- c. Muddemal revolver with cartridges to be sent to the District Magistrate, Nagpur for disposal according to law, after the period of appeal is over.
- d. Muddemal Swift car be returned to the Accused after the period of appeal is over.
- e. Remaining seized property being valueless be destroyed after period of appeal will be over.

Nagpur

Dated:- 08/03/2020

Sd/-
Sessions Judge
Nagpur

CLARIFICATIONS :-

1. For the semi- final and finals, the statements as recorded under Section 161 of the Code of Criminal Procedure and also Defence witnesses as provided in the moot problem will be considered as evidence recorded before the Court during trial.
2. Accused No.1 Varun Joshi will be compulsorily examined (under 313 Cr. P. C.), and teams are to hand over the questionnaire to the presiding judges before the commencement of preliminary round.
3. The Appellate round will be based upon the Judgment passed by the Trial Court.

Disclaimer :-

That, the present moot problem is created on fictitious facts, events. Any resemblance to actual persons, living or dead, or actual events is purely coincidental.