

Parshottam Lalji Waghela

Vs

State of Gujarat

Criminal Appeal No. 519 of 1981

(M. M. Punchi, S. C. Agarwal JJ)

15.05.1992

JUDGMENT

S.C. AGRAWAL, J. –

1. This appeal arises out of an incident which took place at about 7.30 p.m. to 7.45 p.m. on November 12, 1977 in Village Manjalpur, District Vadodara, in Gujarat wherein two persons, namely, Zaver Chhita Solanki and Raman Shiva Parmar sustained gunshot injuries caused by a gun fired by the appellant. The said injuries resulted in the death of both of them. Eight persons, including the appellant, were prosecuted before the Additional Sessions Judge, Vadodara on charges under Section 302 read with Section 149 IPC and Section 27 of the Indian Arms Act. The Additional Sessions Judge, by judgment dated November 28, 1978, acquitted all the accused persons of the charges levelled against them. The State filed an appeal before the High Court of Gujarat against the said order. The said appeal as against the acquittal of the seven accused other than the appellant was dismissed by the High Court at the admission stage. The appeal as against the acquittal of the appellant was, however, admitted and it was allowed by the High Court by judgment dated March 30-31, 1981. The appellant has been convicted for the offence punishable under Section 302, IPC and has been sentenced to imprisonment for life. Aggrieved by the judgment of the High Court, the appellant has filed this appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 read with Section 379 of the Code of Criminal Procedure, 1973.

2. The case of the prosecution, briefly stated, is as follows :

The appellant and the other accused persons are Vankars by caste whereas deceased Zaver Chhita and the complainant party are Chamars. The residential locality of the Vankars is called Vankarwas and the residential locality of Chamars is called Chamarwas. Both are situated adjacent to each other. There is street running in east-west direction in Vankarwas and on the eastern side of the said street, there is the temple of Ranchodji. Towards south of the said temple is the temple of Chamunda Mata which was built by Chamars about a month prior to the occurrence. The relations between Vankars and Chamars in village Majalpur were strained for some time past. Vankars were not permitting the Chamars to pass through the street in Vankarwas. On November 12, 1977, the day of the occurrence, at about 7.30 p.m., one Shantaben (PW 1) was passing through the street in Vankarwas to which the ladies of Vankars objected. The appellant also objected to Shantaben passing through the said street and kicked her on the abdomen. Shantaben went to the temple of Chamunda Mata where Arti and Bhajans were going on and after the Arti and Bhajans

were over, she informed the deceased Zaver Chhita, who was elder brother of the deceased husband of Shantaben as well as other persons present there about her having been assaulted by the appellant. Thereupon, Zaver Chhita along with his son Thakorebhai (PW 2), his cousin brother Rameshbhai (PW 4) and other persons present at the temple proceeded towards the house of the appellant. When they had reached near the Neem tree near the temple of Ranchodji, they were confronted by the appellant and other accused persons. The appellant was armed with a gun and other accused persons were also armed. The appellant fired his gun at Zaver Chhita. The gunshot hit Zaver Chhita on the chest and he fell down near the Neem tree. Thakorebhai, PW 2 took Zaver Chhita to a place near the temple of Chamunda Mata. About ten minutes after the firing of the first gunshot, another gunshot was fired by the appellant towards the house of Punja Chhita. The said shot hit Raman Shiva who was standing in the osri (courtyard) of the house of Punja Chhita. Zaver Chhita and Raman Shiva died as a result of the gunshot injuries sustained by them. Two of the accused persons, namely, Chandulalji (accused 7) and Manilal Jethalal (accused 8) also received injuries. The information about the incident was given to the police control room by Chittabhai Mithabhai Parmar (PW 27) and Mahendra Manilal Vaghela. The control room passed on the said information to Makarpura police station and thereupon the police reached the scene of the occurrence. On the basis of the complaint dictated by Thakore Chhita Solanki (PW 2) a case was registered at the police station, Manjalpur and investigation was started. After completion of the investigation, the police submitted the chargesheet against the accused persons.

3. The post-mortem examination of the dead bodies of the deceased persons was conducted by Dr R.K. Patel, PW 6 on November 13, 1977. The following injuries were found on the person of Zaver Chhita :

"1. A gunshot wound of 2 cms. diameter at the 6th intercostal space (sic) the right side chest 3 cms. anterior to the middle axillary line margins inverted, the wound was cavity (sic) deep with surrounded charring and blackness.

2. A gunshot wound 1 cm. in diameter just near the 1st injury on the right side chest on the mid-axillary line on the 5th rib, margins inverted, the wound was cavity deep with surrounding charring and blackness.

3. A multiple gunshot wound of 1/4 cm. diameter with surrounding blackness and charring on the right side chest extending from second rib to the 8th rib in axillary line about 60 were counted and were in 16 cms. area.

4. A reddish contusion of 2 cms. diameter below the right nipple."

4. According to Dr Patel, the cause of death was due to bullet injuries to the lungs, liver and introthoracic and intraabdominal haemorrhage. He also stated that looking to the nature of the injuries, the bullet must have been fired from a distance of 5 ft. to 10 ft.

5. Dr R.K. Patel found the following injuries on the person of Raman Shiva :

"1. A gunshot wound of 2 cms. diameter cavity deep, brain material seen from the cavity on the bridge of the nose in between the eyebrows, slightly more on the right

side with surrounding charring and with a black mark with echymoya on the right eye margins of the wound inverted. It is a wound of entry.

2. Irregular more or less triangular shaped wound 3 1/2 cms. x 2 x 1 cms. Margins evert (brain substance was coming out right side occipital region likely to be wound of exit).

3. Small reddish contusion 2 1/2 cms. diameter on the left shoulder."

6. According to Dr Patel, the cause of death was laceration of the brain and haemorrhage with fracture skull due to bullet injuries. He also expressed the opinion that the distance from which the bullet was fired would have been within 5 feet.

7. Dr V.D. Gohil, PW 8, examined the injuries found on the person of Chandulaji (Accused 7) on November 13, 1977, and the following injuries were found on his person :

"1. C.L.W. 3' x 1/2' x scalp deep over right side parietal region.

2. C.L.W. 1' x 1/4' x scalp deep over occipital region near nape of neck and semi-lunar.

3. Swelling over left thigh."

8. In the opinion of Dr Gohil, the said injuries can be caused by hard and blunt substance and could have been caused by a stone. Dr Gohil found following injuries on the person of Manilal Jethabhai (accused 8) :

"1. C.L.W. of 2' x 1/8' scalp deep at frontoparietal region near mid line, oblique in direction.

2. Abrasion 1' x 1/2' at nuochal (sic) furrow.

3. Abrasion of 6' size on left side back, oblique in direction.

4. Abrasion of 1' diameter of intrascapular region right to midline.

5. Abrasion of 4' size by knee.

6. Abrasion of 3" size linear over right side kidney area, vertical in direction.

7. Linear abrasion of 6" over calf area."

9. Manilal remained in hospital for about 14 days from November 13, 1977 to November 28, 1977. According to Dr Gohil, the injuries on the person of Manilal could have been caused by a hard and blunt substance like stick or pipe.

10. During the course of investigation, the investigating officer, Govind Jayarambhai Choudhary (PW 28) recovered two empty cartridge cases, slipper, 20 pieces of stones, lead bullet, the photo fallen down in the house of Punja Chhita and also recovered a stick from the place of occurrence. He also recovered a 12 bore gun and cartridge belt with a licence of the said gun in the name of the appellant from the house of the appellant.

11. The prosecution has examined Shantaben, PW 1, Thakorebhai, PW 2, Rameshbhai, PW 4 and Baban Laxaman Chohan, PW 7 as the eyewitnesses of the occurrence. Shantaben, PW 1, has deposed about the incident wherein she had been kicked on the abdomen by the appellant prior to the occurrence and the first part of the incident up to firing of the first gunshot resulting in the death of Zaver Chhita. Thakorebhai, PW 2, has deposed about Shantaben coming to the temple of Chamunda Mata and complaining about the appellant having kicked her on the abdomen and about the persons present at the temple of Chamunda Mata proceeding towards Vankarwas from the temple of Chamunda Mata and the firing of the first shot by the appellant resulting in the death of Zaver Chhita. Rameshbhai, PW 4, has deposed about the entire occurrence involving firing of the two gunshots by the appellant resulting in the death of the deceased persons. He has stated that a day prior to the occurrence, the appellant and three others had beaten his mother and brother. He has also stated that appellant was bearing a grudge against him because he also appeared as a witness for Bhatthu in a case of rape filed by one Usha Barot in whom the appellant is interested. He has deposed about the visit of Shantaben to temple of Chamunda Mata and her having been assaulted by the appellant and about Zaver Chhita and others, including himself, going towards Vankarwas and the firing of the first gunshot at Zaver Chhita. With regard to the firing of the second shot which hit Raman Shiva, he has stated that on seeing him, the appellant had chased him and while he (PW 4) was in the osri of the house of Punja Chhita, the appellant fired the gun at him but as he had moved aside, the bullet hit Raman Shiva who was standing nearby.

12. In his statement recorded under Section 313, CrPC, the appellant stated that on the day of the incident, Shantaben was passing through Vankarwas to which two Vankars ladies objected and there was exchange of words between Shantaben and those ladies and thereupon the appellant went near Shantaben and said that since Vankars and Chamars were not on good terms, it would be better if she did not go through the said place and that Shantaben, thereafter, went through the said place itself towards the temple of Chamunda Mata and 15 to 20 minutes thereafter, a mob of Chamars came shouting "Kill Purshotam Lal Ji and burn down the houses of Vankars" and that the said mob of about 40 to 50 persons armed with sticks, pipes, dharia etc. came towards the appellant's house in Vankarwas. He further stated that another mob of about 50 to 60 persons armed with dharias, sticks and pipes started coming from Chamarwas from the northern direction towards the western direction and started pelting stones and raising shouts "kill Purshotam Lal Ji and Vankars, burn down the houses, burn down the house of Purshotam Lal Ji" and that as a result the females and children of their street and the inmates in the house of the appellant started shouting "save us, save us". At that time, from the neem tree, near the temple, Manilal Jethabhai Vaghela, uncle of the appellant, shouted "Save, save, I am killed" and at that time, the appellant was perplexed and he came out with the gun from his house and started going to the place where the appellant's uncle was being beaten and since the Chamars had surrounded his uncle and were beating him with sticks etc., and as the appellant went there the mob rushed towards him. The appellant has, further, stated that he felt that they would kill him and his uncle and therefore fired a shot in defence. After firing the said shot, the appellant started returning but in the meanwhile another mob of Chamars rushed there and the appellant came rushing near the house of Punja Chhita and found that his brother Chandubhai was surrounded by the mob and he was shouting "save, save" and the mob was having sticks, pipes, dharias etc. and were beating Chandubhai near the osri of Punja Chhita's house. As the appellant went towards that side he felt that mob would kill him and his brother, and, therefore, he fired the second shot in self-defence, towards the osri and since there was darkness in the osri, he does not know whom it hit.

13. The appellant has thus admitted having fired two shots from his gun and the said gunshots resulted in the death of Zaver Chhita as well as Raman Shiva. The appellant has put forward the

plea that the said shots were fired by him in exercise of the right of private defence of his own person as well as the person of his uncle, Manilalbai and brother Chandulalbai who were being assaulted by the armed mobs of Chamars and there was apprehension of injury to persons residing in the Vankarwas.

14. The Additional Sessions Judge accepted the said plea raised by the appellant but the High Court, in appeal, did not accept the said plea. The question which requires to be considered in the appeal is whether the gunshots which resulted in the death of the two deceased, were fired by the appellant in the exercise of the right of private defence of person available to him in law. In order that the said right may be available, it is necessary to examine whether the time when the shots were fired, the appellant was under reasonable apprehension of death or grievous hurt to himself or to those whom he was protecting.

15. Since this appeal has been filed as of right under Section 379 of the Code of Criminal Procedure, 1974 read with Section 2 of the Supreme Court (Enlargement of Jurisdiction) Act, 1970, we have ourselves examined the evidence in the light of the submissions made by learned counsel.

16. In the instant case, the occurrence resulting in the death of the two deceased persons was preceded by the incident involving assault by the appellant on Shantaben. The occurrence itself is in two parts. The first part covers the firing of the first gunshot resulting in the death of Zaver Chhita and the second part covers the firing of second gunshot resulting in the death of Raman Shiva. There is a difference of about 7 - 10 minutes between the firing of two gunshots and the places from where the shots were fired and the places where the two deceased persons received the injuries are also different. Zaver Chhita received the gunshot injury close to neem tree near the temple of Ranchodji at the end of the street passing through Vankarwas. At the time of firing of the said gunshot, the appellant was standing at the end of the said street and was facing in the direction of the temples of Ranchodji and Chamunda Mata. The second gunshot resulting in the death of Raman Shiva was fired by the appellant from a place opposite the house of Punja Chhita in the street passing through Vankarwas. It hit Raman Shiva while he was standing in the osri of the house of Punja Chhita which is the fourth house on the northern side from the eastern end of the street passing through Vankarwas.

17. The incident involving assault on Shantaben by the appellant is proved by Shantaben, PW 1, who has deposed that at about 7.00 to 7.30 p.m. on the day of incident, she was having pains in her abdomen. She went to bring milk and when she reached the door of the house of the appellant, she was told by the appellant that the passage of Khalpas (Chamars) from there was closed. She replied that it was their day and night passage and asked why they were preventing her. PW 1 has stated that thereafter, the appellant gave her a kick blow on her abdomen. She then went to the temple of Chamunda Mata where her husband's elder brother, Zaver Chhita, her nephew Thakorebhai, Purshottambhai, Dahyabhai Hirabhai and others were present and she narrated the above incident to Zaver Chhita. The said evidence of Shantaben, PW 1, has been corroborated by Thakorebhai, PW 2 and Rameshbhai, PW 4, who were present at the temple of Chamunda Mata. The testimony of Shantaben, PW 1, also finds corroboration from the medical evidence of Dr R.K. Patel, PW 6, who has stated that PW 1, was brought to him as the police and she had complained of backache, pain in the abdomen and pain over the right eyebrow. Dr Patel has expressed the view that the aforesaid injuries could have been caused by a kick. In his statement recorded under Section 313, CrPC the appellant has also admitted that the incident took place involving him and Shantaben when she was passing through Vankarwas. From the evidence of Shantaben, PW 1, which finds corroboration from testimony of Thakorebhai, PW 2 and Rameshbhai, PW 4 as well as the medical evidence, it is

established that an incident involving appellant and Shantaben had taken place in the evening at about 7.00 - 7.30 p.m. on the day of the alleged occurrence near the house of the appellant in the street passing through Vankarwas and that while Shantaben was passing through the said street, the appellant had objected to her going through the said street and had also kicked her on the abdomen.

18. With regard to the first part of the occurrence involving firing of the gun resulting in the death of Zaver Chhita is the evidence of Shantaben, PW 1, Thakorebhai, PW 2 and Rameshbhai PW 4 are relevant. Shantaben, PW 1, has stated that after she had narrated the incident involving the appellant having kicked her on the abdomen, Zaver Chhita, along with Thakorebhai, Rameshbhai, Purshottambhai, Dahyabhai, Hirabhai started going to the house of the appellant and she also accompanied them and when they reached near the neem tree, the appellant fired a gunshot towards Zaver Chhita which hit Zaver Chhita on the chest and he fell down near the Tulsi Kyara near the neem tree. PW 1 has also stated that at the time when the appellant fired the gun, others, who are his relatives were also there and some of them had sticks and one had hockey stick. She has also stated that when Zaver Chhita had fallen down, she was injured by a stone by someone and that stones were being thrown by the opponents and that the stone hit her on the left temple region. On cross-examination, she has stated that at the time when she reached Chamunda Mata temple, Arti was over and Bhajans were being sung and she narrated the incident after the Bhajans were over. The Chamars who were present in the temple went home when the Bhajans were over and after she narrated the incident, some Chamars heard and returned back and those who returned had no weapons like sticks etc. It took about 5 minutes to return for the Chamars who had returned. About 6-7 persons had so returned. She has denied that on her telling the Chamars about the beating given to her, they came to the temple of Chamunda Mata with sticks, hockey sticks etc. weapons. She has, however, admitted that on her telling the Chamars about the incident they had become angry against the opponents and they came to Vankarwas from the temple of Chamunda Mata saying "let us deal with Purshottam now". She has stated that stones were thrown from both the sides and that Chamars came up to the neem tree while throwing stones. She has also stated that there was one big stick in the hands of her husband's elder brother and he had no other weapon whatsoever and that Ramesh had no stick with him. She had denied that the mob was beating Chandulal and Manilal Jethabhai and the gunshot was fired to save them. She has stated that a mob of 25 to 30 persons had come from the other direction, i.e. western side, of Vankarwas but it was not throwing stones.

19. Thakorebhai, PW 2, has deposed that at about 7.30 to 7.45 p.m., Shantaben had come to the temple of Chamunda Mata through Vankarwas and started telling them that the appellant and Vitthal Lalji had given her kicks and fist blows and thereupon PW 2, his father Zaverbhai, Rameshbhai, Parshottam, Vitthalbhai, Hirabhai and others started going to the house of the appellant to persuade him and when they reached near the neem tree, they saw a mob coming from the opposite direction. The said mob comprised the appellant, Vitthal Lalji, Jayanti Chandu, Chandubhai Laljibhai, Jivan Lalji, Mahendra Manilal, Manilal Jetha, Ramna Ratilal and others and the appellant was heading them and was raising shouts "Beat, beat" and the appellant had a gun in his hand and others had sticks, pipes, chain, hockey sticks etc. weapons. PW 2 has further stated that when they went near the neem tree by about 2-5 paces, the appellant came there with a gun and straightaway, he fired a gunshot at his father from a distance of about 11 feet. PW 2 has also stated that his father received the bullet injury on his chest and thinking him to be alive, he took him to the temple of Chamunda Mata. PW 2 further stated that about 10 or 5 to 7 minutes thereafter he heard another gun-fire, and after this shot, he went to see towards Vankarwas and he saw the appellant running away. On cross-examination, PW 2 has stated that when Shantaben told that she was beaten by the appellant and his brother, they did feel that it was a very bad act of the appellant in beating Shantaben when she passed through the passage and that the father had become angry though others had also felt so but

they did not become angry. He has, however, denied that after hearing Shantaben's complaint, Chamars went home and after going to their respective houses they brought weapons and assembled and that about 60 to 70 Chamars came up to the neem tree in Vankarwas from the temple of Chamunda Mata. PW 2 has stated that there were 4 to 5 persons who started going to the appellant's house to enquire from him why he had beaten Shantaben and why should there be a quarrel on the auspicious day and that they did not feel it proper to go with weapons. He also stated that when they reached near the neem tree, stones were thrown on them but none of them received injury by a stone. He also stated that no stone was thrown from their side. PW 2 also stated that Manilal received injury in this fight and he was not aware whether Chandu received any injury. PW 2 has also stated that Manilal was injured by a stone in the stone throwing that had ensued subsequently in Vankarwas. He has denied that another mob of Chamars which came from western direction also started stone throwing and that they had weapons like sticks, iron pipes etc. He has also denied that his father had a stick in his hand or that he (PW 2) or Rameshbhai had sticks in their hands.

20. Rameshbhai, PW 4, has also deposed that on the date of the occurrence, he was at the temple of Chamunda Mata and while Arti was going on Shantaben came there and told that she was beaten by the appellant and Vithal Lalji and thereupon he, Zaver Chhita deceased, and others started going from the temple of Chamunda Mata to persuade the appellant and when they reached near the neem tree, they saw the appellant with other persons coming from the opposite direction from Vaghela's house and the appellant had a gun and others were having other weapons and on coming there the appellant fired the gun towards Zaver Chhita and at that time the appellant was at a distance of about 11 feet from Zaver Chhita. On cross-examination, he has admitted that he is an accused in the case which has been filed with respect to the injuries received by Chandulal Lalji and Manilal Jetha at the time of the incident. He has denied that when Shantaben came to the temple and told them about her having been beaten, all the Chamars got provoked and they went up to the neem tree in Vankarwas with sticks, dharias, etc., to beat the appellant and others. He has also denied that another mob of Chamars came to Vankarwas from Chamardwas from western direction and the mob of Chamars which came from two sides was throwing stones on the house of people in Vankarwas. According to PW 4, they (Chamars) were 3 to 4 only and none of them had any weapon. PW 4 has also stated that no exchange of words at all took place before the gun was fired. PW 4 has denied that when Shantaben came and informed them that she was prevented from passing through Vankarwas and was beaten by the appellant and Vithal Lalji all the Chamars got provoked and went to Vankarwas armed with pipes, dharias, sticks, etc. to beat Vankars and the appellant. He has also denied that they had thrown stones and they were about 70 to 80 Chamars. He has also denied that he had a stick in his hand and that a mob of Chamars had surrounded Manilal Lalji near the neem tree and that he (PW 4) and the Chamars accompanying him were beating Chandu Lalji with sticks and pipes etc. and that mobs had arrived from eastern and western directions and started throwing stones and therefore, the appellant had fired the two shots.

21. As regards the second part of the occurrence involving firing of the second shot by the appellant resulting in the death of Raman Shiva Parmar, there is the evidence of Rameshbhai, PW 4, who has stated that after the firing of the first gunshot by the appellant, he ran away from there and he tried to hide near the house of Dalsukh Chhita and the deceased Raman Shiva was there. He has further stated that after firing the first shot, the appellant had chased him and had aimed and fired at him but as he had moved aside, the bullet hit Raman Shiva on his forehead. PW 4 has further stated that the bullet entered the house through the lattice and thereafter he rushed in the house of Dalsukh as its doors were open and therefrom he fled away. During the course of cross-examination, he has explained that Dalsukh and Punja Chhita live in one and the same house on the upper floor and ground floor respectively. He has also stated that Punja Chhita is neither in Chamars group nor in

Vankars group and that he took shelter in the house of Punja Chhita because other houses were closed. He has stated that he had straightaway entered the osri and that he might have stood for about a minute or two after reaching the osri and the second shot was fired and the bullet struck Raman. PW 4 has also stated that when the second shot was fired, the appellant was about ten paces away and was about 15 to 20 feet away from J.D. Parmar's house and that the appellant was standing opposite the house of Dalsukh. He has also stated that the place where the appellant was standing was about 40 feet away from the neem tree. He has also stated that there was no weapon whatsoever at that time in his hands and that Raman had also no weapon.

22. The panchnama of the scene of offence (Ex. 86) shows that fresh marks of flowing of blood were found on the tar road at a distance of 10 inch away towards south from the neem tree. The dead body of Zaver Chhita was found lying near the temple of Chamunda Mata at a distance of 41'7' from the place where the blood was found and the Otta of temple of Chamunda Mata is situate at a distance of 6' from the place where the body was lying. Scattered pieces of bricks and stones (14 in number) were found around the place where the blood was found on the road. At a distance of 29'8' from the place where the blood was found an empty case of cartridge of 12 bore gun was found on the road and on smelling it was emitting smell of explosive. At a further distance of 25' from the place where the empty case of cartridge was found, another 12 bore empty cartridge case was found lying. The place where the second empty case of cartridge was found lying is opposite the osri of the house of Punja Chhita and the dead body of Raman Shiva was lying in the osri of the said house at a distance of 16'6' from the place where the second empty cartridge case was found. Scattered pieces of stones and bricks (20 in number) were found lying between the places from where two cartridge cases were found. There is a room towards the north of the osri and in the said room bullet marks were found on the niche in the wall situate to the north of the window and there was a fresh mark of breaking of a brick at the place in the wall where the bullet had hit and a photograph of Lord Shanker, whose iron frame was bent from the middle on the upper portion, was found lying on the ground and lead cartridge was also found lying on the ground. Further towards the west of the house of Punja Chhita is the house of the appellant and two others and scattered pieces of bricks (12 in number) were found lying on the road in front of these houses.

23. From the aforesaid evidence adduced by the prosecution, it appears that after the incident wherein Shantaben, PW 1 was kicked on the abdomen by the appellant, she went to the temple of Chamunda Mata where she narrated the said incident to the persons who were present there at that time including the deceased, Zaver Chhita, and on hearing about the said incident, the Chamars who were present in the temple felt agitated and decided to proceed towards the house of the appellant in Vankarwas. Since these people left directly from the temple without going to their houses would support the case of the prosecution that they were not armed. When they reached near the neem tree they found that the appellant and other persons were present near the said tree. The appellant was armed with a gun and other persons were also armed. The presence of pieces of bricks and stones near the neem tree indicates that there was some pelting of stones at that place. The prosecution evidence indicates that the second shot was fired by the appellant from opposite the house of Punja Chhita and it hit Raman Shiva who was standing in the osri of the said house. Rameshbhai, PW 4 was also standing in the said osri at that time when the second shot was fired, the appellant had moved inside the street passing through Vankarwas by nearly 40 ft. to 50 ft. According to Rameshbhai, PW 4, the said shot was aimed at him but since he moved it hit Raman Shiva. There were some brick pieces in the street between the places from where the empty cartridge case of first and the second gunshot were recovered and there was also some pelting of stones opposite the houses of the appellant and some of the accused persons further towards the west in the street passing through Vankarwas.

24. Shri Lalji, the learned counsel of the appellant has placed reliance on the statement of Shantaben, that deceased Zaver Chhita was having a stick in his hand and further that stones were thrown from both the sides and that Chamars came up to the neem tree while throwing stones and that as the stone throwing started, females, children raised hue and cry in Vankarwas and stones were thrown on the houses and doors of Vankarwas and Vankars were shouting "save, save". He also pointed out that Shantaben, PW 1, has admitted that another mob of Chamars had come from Vankarwas and they were about 30-35 in number. The submission of Shri Lalit is that after hearing about the incident of Shantaben being kicked on the abdomen by the appellant, the Chamars were enraged and they came towards Vankarwas and that they assaulted Manilal and Chandulal and also indulged in stone throwing on a large scale which created an apprehension in the mind of the appellant that grievous hurt would be caused to him and to Manilal and Chandulal as well as other persons in Vankarwas and that in the circumstances, he had no option but to fire the gun in exercise of the right of private defence of person. We are unable to accept the said submission of Shri Lalit. It is no doubt true that after hearing from Shantaben that she had been kicked on the abdomen by the appellant, the Chamars present at the temple of Chamunda Mata must have felt enraged and they were going towards Vankarwas in an agitated mood. But they were not large in number because Shantaben had narrated the incident at the temple of Chamunda Mata after the Arti and Bhajans were over and by that time most of the Chamars present there had left and only 5 to 7 persons returned on hearing about the incident. Moreover the said group of Chamars which left the temple of Chamunda Mata for Vankarwas was not armed since they were proceeding directly from the temple and people do not carry arms when they go to the temple for worship. On the other hand, the appellant, having anticipated that Chamars would be coming had prepared himself. He was waiting at the eastern end of the street of Vankarwas along with other Vankars and he was armed with a gun. It does appear that there was pelting of stones near the neem tree where Zaver Chhita received the gunshot injury. According to Thakorebhai, PW 2 and Rameshbhai, PW 4, the pelting of stones was from the side of the accused only and they did not indulge in pelting of stones. But Shantaben PW 1 has deposed that there was pelting of stones from both the sides. Accepting that the pelting of stones was from both the sides, it was not on a large scale because only 14 pieces of stones were found lying near the neem tree. It was not even suggested to the prosecution witnesses during cross-examination that before the firing of the first gunshot anybody on the side of the accused had sustained any injury as a result of pelting of stones by the group of Chamars coming from the side of the temple of Chamunda Mata. In these circumstances, we are unable to hold that at the time when he fired the first gunshot which caused the death of Zaver Chhita the appellant had a reasonable apprehension of death or grievous hurt to himself or to those whom he was protecting. On the other hand, the first shot was fired by the appellant as soon as Zaver Chhita and the party of Chamars, who were unarmed, reached near the neem tree.

25. The firing of the second gunshot is even more indefensible. The said shot, as indicated earlier, was fired from a place opposite the house of Punja Chhita which means that after firing the first shot, the appellant had moved inside the street towards the house of Punja Chhita and he fired a gunshot while facing towards the house of Punja Chhita. If the appellant had any apprehension of injury to himself or Chandulalji from the mob of Chamars which had come from the western side of Vankarwas, as pleaded by him, he should have fired the gun towards the mob in the western direction in the street. But the gunshot that was fired by him was towards the osri in the house of Punja Chhita while facing the said house. This lends support to the version given by Rameshbhai, PW 4, that he was being chased by the appellant and since he was standing in the osri of the house of Punja Chhita, the appellant had fired the gun aiming it at Rameshbhai, PW 4 and since PW 4 had moved aside the said shot hit Raman Shiva who was also standing in the osri.

26. Taking in view the aforesaid facts and circumstances, we are of the view that in firing the two gunshots resulting in the death of Zaver Chhita and Raman Shiva the appellant was not acting in exercise of the right of private defence of person. The view of the Additional Sessions Judge that he was acting in exercise of his right of private defence of person cannot be held to be a reasonable view and the High Court, in exercise of its appellate power, was justified in reversing the said view of the Additional Sessions Judge and in setting aside the acquittal of the appellant. In our view, the appellant has been rightly convicted of the offence punishable under Section 302 IPC, for causing the death of Zaver Chhita Solanki and Raman Shiva Parmar. The appeal, therefore, fails and it is accordingly dismissed.

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