

(2001) 08 AHC CK 0137**Allahabad High Court****Case No:** Criminal Appeal No. 1638 of 1980

Bhanu Pratap Tewari and

Another

APPELLANT

Vs

State of U.P.

RESPONDENT**Date of Decision:** Aug. 30, 2001**Acts Referred:**

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313
- Penal Code, 1860 (IPC) - Section 201, 302, 304, 304(1), 309

Citation: (2002) CriLJ 1243**Hon'ble Judges:** S.K. Agarwal, J; J.C. Gupta, J**Bench:** Division Bench**Advocate:** V.S. Singh, for the Appellant; A.G.A., for the Respondent**Final Decision:** Partly Allowed**Judgement**

S.K. Agarwal, J.

This appeal was filed by two appellants, Bhanu Pratap Tewari and Shankar Pratap Tewari against their conviction u/s 302, IPC and sentence of life imprisonment. Shankar Pratap Tewari, appellant was further convicted u/s 201, IPC and sentenced to 4 years R.I. for that count.

2. The facts referred to an incident that had taken place on 22-7-1975 at about 9.00 p.m. inside the house of the appellants in village Badhwa, P.S. Kabarai, district Hamirpur. In this incident Kastoori, wife of Bhanu Pratap had lost her life. The dramatis persons in the incident Smt. Kastoori allegedly had killed herself by firing from the country made pistol belonging to her husband. The gun shot report attracted to the spot Virendra Singh PW 2, Mahendra Singh PW 3 and Ram Khelawan PW 4 apart from Shanker Pratap Tiwari, the informant. The first information report of this incident was registered at P.S. Kabarai on 22-7-1975 at 9.30 p.m. It was a

written report scribed and prepared by Shankar Pratap Tiwari. A copy of Check F.I.R. is Ex. Ka 25 and the memo is Ex. Ka 12. The victim was sent for medical examination at P.H.C. Kabrai. The medical examination was conducted by Dr. M.S. Srivastava, PW 7 at 9.40 p.m. who found the following injury on her person.

One gun shot wound of entrance 4 cms. x 4 cms. on the left side of skull bone entered into the brain and the brain matter was protruding out, the depth on the wound on probe passed through the cranial cavity upto the other side of internal wall of skull.

3. No wound of exist was noticed. No tatooing or burning around the wound was found by the Medical Officer. The patient at the time was alive but was unconscious. The blood was coming out of the mouth, nose and ears. Dr. Srivastava found that the above injury was grievous and was caused by some firearm. The duration was fresh. The injury report of the victim Smt. Kastoori is Ex. Ka-10.

4. Seeing the gravity and serious nature of her injury she was immediately rushed to Government Hospital, Mahoba. The above doctor himself took the injured to the district hospital. The injured breathed her last in the way. Dr. Srivastava himself communicated the information of her death to the police of P.S. Kabrai through his letter, Ex. Ka-19. The body was brought back to the police station. Initially this case was registered u/s 309, IPC in the presence of S.I. Sri Sukhdeo Prasad Mathur, PW 1 on the basis of a report lodged by appellant Shankar Pratap. The investigation was taken over by him. He recorded the statement of several females including Smt. Amba Devi, Smt. Jamki, Smt. Larli and Bhanu Pratap accused. He also took blood stained and simple earth in two separate containers. The memo is Ex. Ka-1. While he was busy in preparing site map and examining the site he learned about the demise of Smt. Kastoori and immediately went back to the police station and drew the inquest memo. The dead body was sent through inquest memo Ex. Ka-3, to the mortuary for post-mortem. All other formalities pertaining to the dead body were also completed by him. The dead body was escorted by Constables Hari Shankar and V.C. Gangadin. The investigation was not completed by him on account of his retirement from service.

5. The investigation in the case was taken over by Shyam Manohar Tripathi. As was earlier stated that a case against the deceased Smt. Kastoori was already registered u/s 309, IPC at the concerned police station and on her demise, the Sub Inspector had submitted final report to S.P. Hamirpur. Seeing the above report he directed the case to be reinvestigated u/s 302, IPC therefore, a case against Bhanu Pratap and Shankar Pratap was registered u/s 302, IPC and the investigation resulted into submission of a charge sheet against them.

6. The abovesaid conversion of the offence from Section 309, IPC to one u/s 302, IPC was particularly based on information sought from Dr. H.S. Srivastava who examined her medically when she was alive and Dr. K.M. Mishra who conducted

post mortem of her body. The opinion of two doctors with regard to the death is that it is a case of homicide. According to them the distance of shooting was more than 4-5 feet and the position of the arm of the shooter might have been on her back tending to left side slightly on higher level. There was no charring around the wound. The incident took place while she may be sitting or standing. On the basis of these responses from these doctors, the said case was converted to Section 302, I.P.C. and these two appellants in the circumstances were put on trial.

7. The prosecution in support of its case has examined Brindavan Singh PW 2, Mahendra Singh PW 3, Ram Khelawan PW 4 and as ocular witnesses. PWs 2, 3 and 4 were examined as public witnesses. PW 1 Sukhdeo Prasad Mathur, S.I. was examined as first investigating officer PW 5, Ujagar Singh has proposed check report and papers pertaining to registration of F.I.R. PW 7, Dr. H.S. Srivastava has medically examined the victim during her life time and Dr. K.N. Mishra, PW 8, had conducted the post mortem PW 9, Laxman Singh Chauhan is the record keeper of police office, Hamirpur. The prosecution has also brought on record the affidavit of Ram Saran Lai Saxena, clerk in District Hospital, Ex. Ka 21 and affidavit of Bashir Khan, peon in District Hospital, Ex. Ka-22. Chemical examination report is Ex.Ka 23 and serologist report is Ex. Ka. 24.

8. Learned counsel for the appellants has contended that the motive in this case has not been proved at all. There is a time gap of 7 hours between quarrel and the actual incident. The direction of the injury is downwards. Absence of any blackening, charring and tattooing is of no importance. According to him there is no evidence to hold Bhanu Pratap liable for the offence u/s 302, I.P.C. Learned A.G.A. on the other hand contended that it is a case of murder and not suicide. The medical evidence fully corroborated it. The F.I.R. was lodged by one of the accused. According to him, presence of both the appellants at the spot is established beyond doubt. The motive is also proved. Therefore, the case against these appellants is proved beyond reasonable doubt. The circumstances are such that they themselves speak the truth.

9. In order to appreciate the arguments from both sides, it shall be expedient for the Court to examine the evidence of PW 2 Brindawan Singh, PW 3 Mahindra Singh and PW 4 Ram Khalawan.

10. According to Brindavan Singh PW 2, both the appellants were known to him since they belong to his village. He stated that the incident had taken place at 9.00 p.m. while he along with two other witnesses was engaged in conversion at his door. He heard gun shot report emanating from the side of the house of Shankar Pratap, appellant. They went to that place. They found the doors of the house open. The entire family was presented inside the house. Some others from the village also reached the spot. He found the deceased Smt. Kastoori lying unconscious near the platform where the Tulsi plant was. Blood was oozing out from her head..Shankar Pratap was preparing to take the victim to the hospital. Bhanu Pratap, appellant was standing there. He did not have any talk with Bhanu Pratap. Both the brothers had

taken the victim to the hospital along with other villagers. They, thereafter, had returned to their house. In the morning they came to know that Shankar Pratap lodged a report at the police station and Smt. Kastoori had died. Bhanu Pratap had never issued anything in this connection with him. He denied that Bhanu Pratap told him that he had committed murder of his wife under a fit of rage. On this denial, the witness was declared hostile by the prosecution and he was cross examined. He denied to have made any statement to investigating officer (hereinafter to be referred to as I.O.) that at about 11.00 in the night Bhanu Pratap came to him alone and told him that "Chacha, please save me. I have committed murder of my wife in a fit of rage." He could not explain the presence of the above part in his statement recorded u/s 161, Cr.P.C. He has even denied his making any statement to the I.O. u/s 161, Cr.P.C. that Bhanu Pratap was carrying on with Smt. Malti for the last 2 years. This Malti was daughter of his neighbour Suraj Prasad. He denied any such relationship between appellant Bhanu Pratap and Malti. However, he could not offer any explanation for its presence in his statement recorded by the investigating officer. He also denied the prosecution suggestion that he had colluded with the appellants and therefore is not telling the truth. Thus, from his statement it is apparent that there is absolutely nothing in his statement from which any strength to the motive, the fact that Bhanu Pratap, appellant, was the author of the injury upon his wife which proved ultimately fatal could be gathered. The motive is thus not established at all.

11. However, from his statement some facts are discernible, (a) He heard a gun shot report at 9.00 p.m. (b) He along with two others went inside the house of these appellants, (c) He found both the appellants present in their court yard, (d). The injured was lying unconscious and blood was coming out from her head and (e) Shankar Pratap was preparing to take her to hospital.

12. Mahendra Singh, PW 3, had also corroborated PW 2 on the above said facts. He had heard a gun shot report when they were sitting at the house of Brindavan Singh, PW 2 coming from the side of house of Bhanu Pratap. Hearing the alarm they rushed towards that house. He found that near the Tulsi plant in the inner court yard Smt. Kastoori wife of Bhanu Pratap, appellant, was lying unconscious. Blood was oozing out from her head. Near the injured, family members of Bhanu Pratap and a number of villagers were present. Bhanu Pratap and Shankar Pratap had taken the injured to the hospital. He also stated that a country made pistol was seen by him lying near the victim Smt. Kastoori. They stayed there for 15-20 minutes and, thereafter he and Brindavan Singh went back. He had stated that when he and Brindavan after their return from the house of the appellant were talking. Bhanu Pratap had not visited them. He had denied that Bhanu Pratap had ever discussed anything regarding this murder with him or Brindavan. He further denied that Bhanu Pratap had ever told him that he had killed his wife in anger. He had admitted that he knew Suraj Prasad and his daughter Malti but denied categorically that there existed any illicit intimacy between appellant Bhanu Pratap and her. He

had admitted that till the date of occurrence, Malti's second marriage (Ganga) had not taken place. She was living at her father's house. He was also declared hostile by the prosecution and was cross-examined. He admitted that his statement was recorded by the investigating officer but denied that he had made this statement that about 11.00 pm. in the night, Bhanu Pratap, appellant, came to them alone and sat there and thereafter he disclosed that "Uncle save me. I have killed my wife in anger." He stated that I do not know how this statement is transcribed by the I.O. He further denied his so called statement recorded by the I.O. that Bhanu Pratap was having any illicit intimacy with the daughter of Suraj Prasad, for the last 2 years. How such statement was transcribed he failed to explain it. He stands no better, in the circumstances, than PW 2 Brindavan. If the statement of Brindavan is not furnishing any clue to the Court with regard to the motive of the incident or the assailants, it shall be very difficult for the Court to draw any such inference from the statement of this witness. In addition to the circumstances provided by PW 2 Brindawan he had stated about the presence of a pistol near the deceased.

12-A. The statement of Ram Khelawan, PW 4, is that at about 9.00 pm. he along with Mahendra Singh were sitting at the door of Brindavan. They were engaged in conversion. They heard report of gun fire coming from the house of Bhanu Pratap. All of them rushed towards that house. They found the deceased lying near the Tulsi plant in an unconscious state. She was injured and blood was oozing from her head. A country made pistol was in the hand of Shankar Pratap and Bhanu Pratap was also standing there. Shankar Pratap was making arrangement for taking the victim to the hospital. He pleaded ignorance regarding any illicit intimacy between Malti and appellant Bhanu Pratap. He admitted in cross examination that Malti was married before the incident.

13. Thus from his statement only relevant fact available is that a country made pistol was in the hand of Shankar Pratap. However, he was not corroborated on this issue by PW 3. According to him the country made pistol was lying near the body of injured Smt. Kastoori. So far as Brindavan PW 2 is concerned, he had not taken any such statement regarding the presence of a country made pistol.

14. The statement of PW 5, Ujagar Singh, apart from the facts pertaining to the registration of F.I.R. at the instance of Shankar Pratap provides us that a country made pistol was deposited with a spent cartridge by Shankar Pratap in the police station at the time of registration of the case. He prepared its Fard recovery Ex. Ka-9. The country made pistol with the spent cartridge was sealed by him in the presence of Badri Prasad and Guru Prasad. He has denied the defence suggestion that this Fard recovery, Ex. Ka-9, was not signed from the witnesses first and the contents were scribed later on. Therefore, from his cross examination, only fact apparent is that Shankar Pratap, had deposited the country made pistol at the police station. He was re-examined by the prosecution to prove the loss of original written report. He had admitted that he had scribed the contents of the written report in check

register. He had proved that the F.I.R. brought on record is the carbon copy submitted to CO. Mahoba. It is in his hand writing. This copy is Ex. Ka-25. He has denied that he is concealing any truth from the Court regarding original F.I.R.

15. The statement of PW 6, Dr. S.N. Chaudhary, Reader to S.P. Jalaun at Oral, ♀ was examined to prove that this case was registered u/s 309, I.P.C. and on the instructions of S.P. Orai, it was converted u/s 302, I.P.C. on 17-3-1975. He has proved the letter of S.P. containing a direction for its conversion. It is Ex. Ka 10. He further stated that on the instruction of S.P. he took the investigation into his hands. He has proved the statement recorded by him u/s 161 Cr.P.C. of Brindaban Singh. He has further proved its copy as Ex. Ka. 11. After recording the statement of Dr. K.N. Mishra on 14-8-1978 he had submitted a charge-sheet against both the appellants u/s 302, I.P.C. Another charge-sheet was submitted against Shankar Pratap u/s 25 Arms Act. He has proved the statement made to him by Brindavan u/s 161, Cr.P.C. that Bhanu Pratap, accused appellant came to him at about 11.00 p.m. alone and stated that he had killed his wife in anger. He further proved that the abovesaid witnesses had told him that Bhanu Pratap was having illicit intimacy with Malti. Similar statement of Mahendra Singh was also proved by him. These statements were proved as Ex. Ka-16 and Ka-17. According to him he had found the evidence about the body of injured Smt. Kastoori lying about 3 steps from the Tulsi plant.

16. PW 7, Dr. H.S. Srivastava has examined the victim during her life time. The injuries found by him were earlier noted in this judgment. The injury report is Ex. Ka-16. He had stated that after the medical examination he found her condition precarious, therefore, he had taken her in an ambulance to the Government Hospital, Mahoba but on the way she breathed her last. To this effect he had sent a letter to the police of P.S. Kabrai. This letter is Ex. Ka-15 on record. He has very clearly stated that the injury sustained by Smt. Kastoori, deceased, was caused from a distance of 4 feet or even from shorter distance than 4 feet. He was of the opinion that this injury was homicidal. He had further stated that it can be caused at 9.00 pm. on 22-7-1975. In cross examination he stated that his statement that the injury could be caused from a distance of 4 feet or more is based on the absence of tattooing and burning around the injury. He further stated that because the injury was apparently caused from a distance beyond 4 feet, therefore, he suggested that it is a homicidal death. Tattooing and burning are caused from gun from a distance upto 4 feet. His opinion is based upon the books of Medical Jurisprudence including Modi's medical jurisprudence. According to him from a distance of 12" there is no possibility of burning but he was definite regarding absence of tattooing. He had not cleaned the wound nor dressed it because in doing so her condition might have become worse. He had only given injection of Vitamin B Complex. Brain matter was protruding out from the injury. If the brain matter will protrude for long time, the margins could become deflated but the region where this injury was such a probability is remote. He has admitted that since he had not cleaned the wound, therefore, any mistake in measuring the area of the injury is possible. He might have

included the area surrounded by blood also. According to him if the firing is made in contract with the skin, there will be no burning and tattooing on the margins. If the firing is made in the above situation by placing a piece of cotton between the barrel and the skin, there will be no blackening or tattooing. Thus from his statement only one thing is clear that the injury was caused from a distance of 4 feet or beyond and, therefore, it was a homicidal death. Although later part of his cross examination leaves some room for doubt where he was admitted that if the barrel is pressed against the skin in that situation there will be no burning or tattooing around the wound. It may be in the track. Same will be the situation if a piece of cotton is placed between the barrel and the skin and there will be no blackening even in the flesh.

17. The statement of PW 8, Dr. K.N. Mishra, on this issue is also worth mention. He has admitted in cross-examination that since there was no blackening and tattooing or scorching around the wound, therefore, he has opined that this injury was caused from a distance of 4 feet or beyond. He further stated that since injury was caused from a distance of 4 feet, therefore, he had stated that it was caused by some other person meaning thereby it was a homicidal death. He has further opined that since the injury was on the left side, its direction was downwards inward and then forward, therefore, he was of the opinion that such an injury could be caused by another person and not by the deceased herself. He had qualified his statement by stating that if the deceased was a left-hander then it is possible that such an injury may result. He has further stated that the nature of the injury and the distance from whether it was caused and its direction eliminate the probability of this injury having been caused by the deceased even if she was a left-hander. In response to the defence question whether such an injury could be caused if the left-hander rests the barrel on her shoulder, the doctor stated that there is little possibility of such an injury even in that event and if per chance muzzle is placed in the situation in which the injury is, the direction will be different. Since the direction of the injury is inward, downward and took a route of 5 or 5-1/2" in the skull cavity and the bullet was lodged 2-2V4" from its entry. There was hardly any chance of the injury being self inflicted. He had further admitted that bullet may change its course on coming in contact with a bone. In the present case, there is possibility of deflection. At that time of post mortem brain matter protruded out. He did not find any substance on the clothes of the victim. He had stated that even if a piece of cloth is placed between the muzzle and the skin the powder is likely to pass through the layer of cloth due to heat and if velocity. It will create burning and tattooing around the wound. It will depend upon the distance travelled by the gun powder after passing through cloth. If it will reach the injury it will cause blackening and tattooing. He has admitted that in the inquest memo brain matter is coming out was noted. The membrance may have come out. The I.O. may have mistook it as brain matter. There is no possibility in the present case of the brain matter coming out. He did not make any note in the post mortem report regarding this discrepancy. He did not receive injury report before conducting post mortem. He denied that he had made

any laches in conducting the post mortem. Thus, from his statement it is abundantly clear that this injury was definitely caused by some one else. It leads to the inference clearly that this was a case of homicide and not of suicide as claimed in his F.I.R. by appellant Shankar Pratap.

18. Despite coming to this conclusion we are still short of the positive evidence by which the conviction of these accused persons could be confirmed. Both the appellants have denied their participation in the ♦incident. Bhanu Pratap has stated that Shankar Pratap had taken the victim to the police station to lodge F.I.R. and from there he has taken her to hospital. Shankar Pratap had denied deposit of any country made pistol and spent cartridge at the police station. He stated that it was deposited by one Shiv Gopal. Only his signatures were obtained on the recovery memo. So far as the pistol is concerned, the statement of PW 4, Ram Khelawa, in this regard assumes significance. According to PW 4, when he reached the spot, country made pistol was in the hand of Shankar Pratap and Bhanu Pratap was just standing there. The denial of Shankar Pratap that the country made pistol was not deposited by him is falsified from the statement of PW 5, Head Moharrir Ujagar Singh who had categorically stated that a country made pistol was deposited by Shankar Pratap. PW 2 Brindawan had stated that he had seen a country made pistol lying by the side of the victim at a little distance but we do not find any motive for Shankar Pratap to use the country pistol against his brother's wife. The prosecution had not come with any case against him. No reason for his participation has been brought on record. In the circumstances we find it very difficult to hold that Shankar Pratap was the assailant of his sister-in-law Kastoori. The prosecution has come up initially at the stage of statements u/s 161, Cr.P.C. with a definite motive that Bhanu Pratap, husband of the victim, was living in illicit intimacy with Malti, daughter of Suraj Prasad of his own village. She was a married woman but her Gauna ceremony had not taken place till the date of incident. There is no evidence worth the name on the record to prove it except 161, Cr.P.C. statements of these 3 witnesses. There is no substantive evidence to corroborate this piece of evidence brought on record by the prosecution, especially when the witnesses have denied their making any such statement, to investigating officer. In the face of their denial, this piece of evidence could not be accepted against the appellants. All these witnesses PWs 2, 3 and 4 were declared hostile. So far as Ram Khelawan is concerned he had not stated anything about the motive in examination in chief.

19. So far as the PW 2 is concerned he has not stated anything about the presence of any country made pistol near Smt. Kastoori or in the hands of any of these appellants. In the circumstances we find it very difficult to attribute to Shankar Pratap use of this weapon. Otherwise also there is nothing on record to enable the Court to come to any such conclusion. The record is highly discrepant regarding the author of this injury. Not a single inmate of his house was examined, although the evidence gives a clear indication about the presence of all of them. Apart from these two brothers some more persons were also living in the family but the prosecution

had closed the evidence by examining these witnesses alone. In the circumstances this Court finds it difficult to reach to any conclusion about the real author of this injury on the basis of ocular evidence adduced by prosecution. In fact none of these witnesses gave any eye witness account of the incident.

20. We have the only evidence, that some quarrel took place between the husband and the wife that too from the first information report lodged by Shankar Pratap. According to this report in the afternoon some quarrel had taken place between appellant Bhanu Pratap and his wife Kastoori Devi on some issue and Bhanu Pratap gave her some beating. This incident had taken place at 9.00 p.m. in the night after they took their meals and retired to bed. There still remains this question to be answered, how this woman, deceased came out in the court yard near the Tulsi plant? Either she was fired upon inside the room and she ran out and fell near the Tulsi plant or she was fired upon while running to save herself. Undoubtedly it is proved from the medical evidence that she was fired upon and had not killed herself by firing from the country made pistol. How this country made pistol became available to her is also not known. Shankar Pratap F.I.R. too is silent on this point. There is no evidence that she was verse with the use of a fire arm. If she used the country made pistol herself, her hand would have received some injury. It may have also some gun powder around the fingers. Complete absence of any such thing also clearly eliminate the use of a fire arm by her. The nature of injury and its route also establish clearly that it was homicidal death and not a suicide. Having come to such a conclusion we still have to work out as to who of the two appellants can be held liable for this injury and what is the evidence for us to fix that liability. The so called witnesses do not provide us any assistance in this regard. We are precluded from taking into consideration the statements made by Bhanu Pratap to Brindaban in the presence of Mahendra and Ram Khelawan. Both Brindaban and Mahendra have declined to support the prosecution on this point. Mahendra has not stated a word about this confessional statement by Bhanu Pratap, therefore, we are not in a position to take use of this confession at all. The law does not permit us to do so.

21. Suspicion howsoever strong cannot form the basis of any conviction. However, we tried to explore the circumstances available to us from the record. First circumstance, thus, available to us is the F.I.R. itself lodged by Shankar Pratap which shows that she had committed suicide on account of an afternoon quarrel. As earlier discussed, we have not accepted this part of the defence case. The medical evidence, the opinion of the medical officers, the fact that there is no blackening or tattooing in her injury or that there was no injury on her hand and country made pistol was lying on the left side of the victim, the seat of this injury, direction of the injury and the route adhered to by the bullet. All eliminate the possibility of use of a firearm by the victim to commit suicide. Therefore, Shankar Pratap has come out with a false case. Suicide is not borne out from the circumstances discussed above. We are left with the only fact that a quarrel had taken place admittedly between Bhanu Pratap and his wife during the day and there is every possibility that on his

return some fresh quarrel may have taken place between the husband and the wife. Bhanu Pratap enraged by it lost his cool and used the weapon which was seen in the hands of Shankar Pratap appellant by PW 4 Ram Khelawan when he reached the house of Bhanu Pratap Singh immediately on hearing the gun shot report. The victim either was fired upon when she was inside the room or when she tried to run away from the wrath of her husband on seeing a pistol in his hand. The medical evidence categorically supports this situation. Absence of blackening or tattooing in the injury inside and outside it is self explanatory and supports the conclusion that it is homicidal death. No other person in the family has any motive to kill the victim including Shankar Pratap. Bhanu Pratap is the only person who could use the weapon against his wife in a moment of rage. Absence of any exist wound is yet another circumstance which confirms that this is a homicidal injury and not a suicidal injury. A bullet was recovered from the left middle fossae. It is common knowledge that spent cartridges are refilled and used. Bullets are also used in a hand filled cartridge. In this case a bullet was embedded in the wound. This is yet another circumstance that shows Smt. Kastoori was done to death.

22. So far as the F.I.R. lodged by Shankar Pratap is concerned, it can be made use by the Court against Bhanu Pratap in the least since Bhanu Pratap has given a statement denying any quarrel with his wife. This piece of statement in the F.I.R. can be made use of as a circumstance against Bhanu Pratap who alone might have committed the murder of his wife. Having understood the situation or on legal advice he is now denying any quarrel. No cross examination was directed against the two medical officers regarding the duration of this injury. Although the statement of PW 8 is that this injury could be caused at 9.00 pm. PW 8, who conducted the post-motem was categorical in his statement that even if the victim was a lefthander such an injury cannot be caused. He has further categorically stated that even if some how or the other, the victim is able to place barrel on the post where this injury is, it cannot be caused. Therefore, in the opinion of PW 8, it would not be a self suffered injury. In response to the question that was sent by the police to the doctor, we, find that at SI. No. 5 of the response, the probable duration as noted as 0 to 6 hours. Taking this incident back by few hours we find that the incident may have taken place in between 6 and 9 p.m. and these hours may have been used by these persons to cook up this false story of deceased having committed suicide. In the circumstances we find appellant Bhanu Pratap guilty of causing injury upon his wife from a fire arm. Bhanu Pratap is the husband. He was under an obligation to explain all the circumstances including reasons behind her committing suicide. The death is most unnatural and he completely failed to prove us any clue towards it. His presence at the relevant time is admitted to PWs 2 to 4. No cross-examination to dispose it were made. The presence of injury on her left side, on shoulder, is most improbable. Suicide are not committed in this manner. Generally suicide are committed either by placing the barrel inside the mouth, underneath the chin or on the temple but not on the shoulder so as to allow the

bullet to travel downward. This is a most unheard of situation to commit a suicide. The quarrel had taken place seven hours ago, it also rules out any prospect of her committing suicide. Stomach contained semi digested food matter. It also belies the story of suicide. None of them offered any explanation how and from where she got a pistol to shoot herself. The presence of country made pistol inside their house is proved beyond doubt from the evidence on record.

23. The story in the F.I.R. lodged by appellant Shankar Pratap was thus false and cannot be relied upon to hold that it was a case of suicide. The suicide in our opinion is completely ruled out.

24. What shall be the offence is now to be examined. Whether it was an intended and deliberate assault with a firearm in order to get rid of his quarrelsome wife or it was a shot fired by him in an utterly disturbed state of mind. The probability that she might have quarrelled on his return cannot be ruled out. The air is rent with the smell of Malti behind this incident although it is not proved. In these circumstances whether it is an offence u/s 302 I.P.C. or u/s 304 I.P.C.? Following circumstances retrieve him from the worse :

Suicides are not committed in any haste or spontaneously. One has to prepare itself for doing so. It also requires some extraordinary provocation or a depressed mental state. It requires extra ordinary courage. The defence has not made any attempt to explain what drove her to take this drastic step. It was obligatory on them especially her husband. He has maintained throughout complete silence.

He did not run away from the spot but remained present there. He was seen present immediately after the incident by witnesses. His further conduct that he has taken his wife to the hospital shows that this incident had taken place in the circumstances beyond his control. The murder was not deliberately committed by him with an intention to kill her. There are circumstances available from this first information report, Ex. Ka. 25, which lead us to the inference that the offence will not travel beyond Section 304(I) I.P.C. No person will fire upon his wife after 7 hours for the quarrel of the afternoon unless something fresh has transpired. He was not an insane. Though no such plea was taken by him yet in our opinion it is flowing from the events and circumstances. He has stated a new fact that his brother in law came for the Bidai of his sister but he declined to send her therefore she became angry. It has come in his Section 313 Cr.P.C. statement. Lodging of F.I.R. by co-accused, his brother, is also admitted by him. The story disclosed now by him is per se false. It was not stated at the first stage or even to first medical officer. In the circumstances we hold Bhanu Pratap Tewari guilty of the offence u/s 304 Part (I) I.P.C. but we acquit Shankar Pratap of the offence of murder. So far as Shankar Pratap is concerned, there is ample evidence to hold him guilty u/s 201 I.P.C. He had tried to conceal the authorship of this homicide. He had tried to protect his brother from the charge of this offence. He had made false first information report to the extent that the victim had committed suicide thereby he has tried to erase the

evidence of this murder. He even denied taking the pistol to police station and its giving to P.W. 5, Head Moharrir. For these reasons we are holding him guilty for the offence u/s 201 I.P.C. So far as Bhanu Pratap is concerned, we are of the opinion that a sentence of 7 years R. I. is sufficient to meet the ends of justice. So far as Shankar Pratap Tewari is concerned, we find it sufficient to sentence him to 3 years R. I. u/s 201 I.P.C. His conviction u/s 25 Arms Act, in the circumstances, is set aside and he is acquitted of that charge.

25. In the result, this appeal is partly allowed to the extent that Bhanu Pratap Tewari is convicted u/s 304(1) I.P.C. and is acquitted of the charge u/s 302 I.P.C. He is sentenced to 7 years R. I. Shankar Pratap Tewari is acquitted of the above offence but he is convicted for the offence u/s 201 I.P.C. and sentenced to 3 years R.I. He is acquitted of the offence u/s 25 Arms Act as well. Both the appellants are on bail. They shall be taken into custody forthwith to serve out their abovesaid sentences.