

**(2010) 09 AHC CK 0507****Allahabad High Court****Case No:** Criminal M.W.P. No. 16765 of 2010

Vishan Chandra Yadav and

Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision:** Sept. 8, 2010**Acts Referred:**

- Constitution of India, 1950 - Article 20(2)
- Criminal Procedure Code, 1973 (CrPC) - Section 161, 164, 173(8), 300
- Penal Code, 1860 (IPC) - Section 302

**Citation:** (2011) 1 ACR 948**Hon'ble Judges:** Surendra Singh, J; Amar Saran, J**Bench:** Division Bench**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

Amar Saran and Surendra Singh, JJ.

This writ petition has been filed for quashing the F.I.R. dated 5.3.2005 registered at Case Crime No. 151 of 2005, u/s 302, I.P.C., P.S. Bhagatpur, district Moradabad and also for a direction not to arrest the Petitioners during investigation.

2. This is a case of torture resulting in death in police custody. It was submitted that the statements of the witnesses were recorded u/s 161. Code of Criminal Procedure, which showed that the deceased Lalman had committed suicide by running into the kitchen in the police station and cutting his throat with a knife lying there. Even the statement of Premraj, Respondent No. 3, the informant, who is the brother and Smt. Munni Devi, the wife of the deceased were recorded u/s 164, Code of Criminal Procedure on 14.9.2005, wherein it was mentioned that the deceased had committed suicide. The Investigating Officer has submitted a final report against the accused, who were police personnel on 19.9.2005. On 24.2.2006 the C.J.M.,

Moradabad accepted the final report after the witnesses appeared and filed affidavits stating that they were not interested in prosecuting the accused.

3. Subsequently, however, it appears that on the recommendation of the National Human Rights Commission, the C.B.C.I.D., Sector Bareilly, has conducted the investigation. It was submitted that there was a bar on second investigation in view of Article 20(2) of the Constitution and Section 300 of the Code of Criminal Procedure. In this connection. Article 20(2) of the Constitution reads "no person shall be prosecuted and punished for the same offence more than once." In the present case, a final report was submitted, the Petitioners were not prosecuted even once, hence there is no question of double jeopardy, if a further investigation into the occurrence is carried out. Likewise, the bar u/s 300 of the Code of Criminal Procedure, again also prohibits a second trial of an accused for an offence, who has been tried and convicted or acquitted of an offence by a competent court earlier, while such conviction or acquittal remains in force, on the same facts. Here clearly as the Petitioners were not tried at all, these provisions can have no application. u/s 173(8) of the Code of Criminal Procedure, there is no fetter on further investigation. On the facts also, as the post-mortem report shows that the deceased had more than one knife injury, it is not very probable that the said injuries could have been self inflicted and it is a little difficult to comprehend how the deceased could have rushed into the kitchen of the police station and picked up a knife and slit his own throat. We, therefore, see no illegality in this direction for further investigation. This is a case u/s 302, I.P.C. and police personnel are being sought to be prosecuted for it. The petition has no force and it is dismissed in limine.