



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.698 OF 2023  
WITH  
CRIMINAL APPLICATION NO.651 OF 2024

Vinod Bapurao Chavan  
Age: 36 years, Occu: Service  
R/o: Chausala, Taluka and  
District Beed

.... Appellant

**Versus**

1. The State of Maharashtra  
2. Shashank s/o Jalindar Pawar  
Age: 53 years, Occu: Service  
R/o: Mahatmaphule Nagar,  
Beed

.... Respondents

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**Appearance :-**

Mr. Nilesh S. Ghanekar, Advocate for the Appellant  
Dr. Kalpalata Patil Bharaswadkar, Addl. PP for Respondent No.1  
- State  
Miss. Preeti R. Wankhade h/f Mr. D. M. Hange, Advocate for  
Respondent No.2

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**CORAM : R. G. AVACHAT &  
NEERAJ P. DHOTE, JJ.**

**Reserved On : 20/12/2024  
Pronounced On : 10/01/2025**

**JUDGMENT : [PER NEERAJ P. DHOTE, J.]**

1. By the present Appeal preferred under Section 374[2] of the Criminal Procedure Code, 1973 [hereinafter referred to as 'Cr.P.C.'], the Appellant has challenged his conviction and sentence awarded by the learned Sessions Judge, Osmanabad, vide Judgment and Order dated 08/05/2023, in Sessions Case No.44/2018 for the offence punishable under Sections 302 and 201 of the Indian Penal Code, 1860 [hereinafter referred to as 'I.P.C.']. The sentence is as under :-

- [a] *For the offence punishable under Section 302 of IPC, to suffer imprisonment for life and to pay fine of Rs.50,000/-, in default, to suffer rigorous imprisonment for six [6] months.*
- [b] *For the offence punishable under Section 201 of IPC, to suffer rigorous imprisonment for seven [7] years and to pay fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for two [2] months.*

2. The Prosecution's case as revealed from the Police Report is as under :-

[I] The Appellant got married to Monali [hereinafter referred to as 'the Deceased'], the daughter of Informant - Shashank Jalindar Pawar, in November - 2014. The Appellant was in Police Services. At the time of incident, the Appellant and Deceased were residing together at Yermala, Taluka Kalamb, District Osmanabad in a rented house. At the time of marriage, the dowry was demanded by the Appellant and his parents. After the marriage, the demand for remaining dowry persisted. As the father of Deceased could not meet the demand, the Deceased was subjected to harassment. On 24/01/2018, the Appellant had gone to Aurangabad to attend the workshop. He returned home in between 23.30 to 24.00 hours. He gave call to the Deceased to open the door. The Deceased opened the door and the Appellant went inside the house. The Appellant doubted that, some person had come to his house and when the Appellant returned home, an electric bulb of neighbourer was burning and it was switched off. Quarrel took place between the Appellant and the Deceased.

On 25/01/2018 around 08.58 hours, the Deceased gave a phone call to her mother and narrated about the quarrel by the Appellant with her in the previous night. The Deceased asked her mother to inform her father to give understanding to the Appellant. The conversation between the

Deceased and mother lasted for ten [10] minutes and some seconds. Thereafter around 09.17 hours, the Deceased's mother gave phone call to the mobile of the Deceased and she heard the noise as 'मम्मेव मम्मेव'. Immediately, the parents of the Deceased, who were residing at Beed, proceeded towards Yermala. When they reached the Hospital at Barshi, they noticed the dead body of their daughter. The Deceased suffered firearm injury at her residence and she was moved to the Hospital where she succumbed to the injuries. On the basis of MLC, ADR No.0/18 came to be registered with Barshi Police Station. After the Inquest, the body was referred for Postmortem. Her last rites were performed. The father of Deceased lodged the Report with Yermala Police Station against the Appellant and his parents that, his daughter was treated with cruelty and murdered, as Rs.5,00,000/- remained to be given as dowry. Crime No.07/2018 came to be registered against the Appellant and his parents for the offence punishable under Sections 302 and 498-A read with Section 34 of IPC.

[II] On registration of the Crime, the investigation started. The statements of witnesses were recorded. The Inquest and Spot Panchnama were already done during the inquiry in the ADR. On Postmortem, the cause of death was revealed as '*haemorrhagic shock due to firearm injury to abdomen*'. The firearm and articles collected during the course of investigation were referred to the Chemical Analysis. The Investigating Officer sought opinion of Chemical Analyzer on certain aspects. The mobile phones of the Deceased and the Appellant came to be seized. On completion of investigation, the Appellant and his parents came to be Charge-sheeted.

[III] The learned Trial Court framed the Charge against the Appellant and his parents for the offence punishable under Sections 302, 201 and 498-A of IPC vide Exhibit – 67, to which, the Appellant and his parents pleaded not guilty and claimed to be tried. To prove the Charge, the Prosecution examined in all fourteen [14] witnesses and brought on record the relevant documents. After the Prosecution closed their evidence, the statement of the Appellant and his parents came to be recorded by the learned Trial Court under Section 313[1][b] of Cr.P.C. It was the defence of Appellant that, his wife committed suicide by using his service revolver, as she was unhappy for not getting pregnant and false Crime was registered against them. On appreciating the evidence available on record, the learned Trial Court passed the impugned Judgment and Order, by which, the parents of the Appellant came to be acquitted of all the Charges. The Appellant came to be acquitted for the Charge of the offence under Section 498-A of I.P.C. and recorded the conviction against the Appellant as mentioned in Paragraph No.1 above.

3. Heard the learned Advocate for the Appellant, learned Addl. P.P. for Respondent No.1 – State and the learned Advocate for Respondent No.2 – Informant. Scrutinized the evidence on record.

4. The Prosecution's case is based on circumstantial evidence. The learned Advocate for the Appellant has aptly relied on the Judgment in **Sharad Biridhichand Sarda Vs. State of Maharashtra; 1984 [4] SCC 116**, wherein, the principles in respect of the cases based on circumstantial evidence are reiterated, which reads as follows :-

- “(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.*
- (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.*
- (3) The circumstances should be of a conclusive nature and tendency.*
- (4) They should exclude every possible hypothesis except the one to be proved, and*
- (5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”*

5. From the evidence available on record and the submissions advanced by both the sides across the bar, following are the circumstances relied upon by the Prosecution to prove the Charge against the Appellant :-

- [i] Unnatural death of Appellant's wife at her matrimonial home by firearm injury ;
- [ii] Oral Dying Declaration ;
- [iii] Use of firearm from the close range ;
- [iv] Absence of gunpowder on the hands of Deceased ;
- [v] Body part where the firearm injury was caused ;
- [vi] Blood on the towel of the Appellant ;
- [vii] Motive

**[i] Unnatural death of Appellant's wife at her matrimonial home by firearm injury**

6. As regards the death of Appellant's wife by firearm injury is concerned, it is not in dispute. It is submitted by the learned Advocate for the Appellant that, there is no quarrel on the aspect that, the Appellant's wife died of injury caused by the bullet fired from the firearm. On this circumstance, the crucial

evidence is that of PW – 8 [Dr. Santosh Baburao Bhoi], who was Associate Professor in the Department of Forensic Medicine in the Government Medical College, Solapur since 2010. He received the dead body of Appellant's wife from Barshi Shahar, Solapur Police Station on 26/01/2018 at 01.50 p.m. He performed the autopsy from 02.00 p.m till 03.30 p.m. He was assisted by other two Medical Officers. On external examination, the Medical Officers found the following injuries :-

- “i) penetrating lacerated wound oval in shape of size 0.8 cm x 0.5 cm. present on anterior aspect of abdomen. It is 120 cm. from feet. The wound is 16 cm. infero medial to left nipple, 18 cm. infero medial to right nipple, 13 cm. from the umbilicus and 25 cm. from the sternal notch. The abrasion collar and greuse collar are present. The margin of wound are inverted. The wound is surrounded by burning, blackening and singeing of hairs in encircling area around entry wound of diameter 05 cm. suggestive of firearm entry wound.
- ii) Penetrating lacerated wound of seize 0.5 x 0.5 cm present on left side of back 160 cm. Above feet and 4.5cm. From the midline. Suggestive of firm arm exist wound.
- iii) Penetrating lacerated wound of size 0.5 cm. X 0.5 cm. present on left side of back 116.5 cm. above feet and 4 cm. from the midline, suggestive of firearm exist wound.
- iv) Contused abrasion of size 5 x 5 cm. Present 0.5 cm. Inferior lateral from injury No.4 redish blue in colour.
- v) Track of the firearm injury is skin at the region of firearm entry wound- underlined fescia underlined muscles then going to posterior lacerated below the stomach to greater omentum- underlined muscles corresponding injury No.2, 3- underlined fascia corresponding injury No.2 & 3, skin corresponding injury No.2 & 3. with infiltration and extra vessation of blood within the track.”

6.1 His evidence shows that, Injury Nos.1 to 3 were possible by firearm and were fresh in nature. Injury No.4 was possible by hard and blunt object and all the injuries were ante-mortem in nature.

6.2 They also did the internal examination of the body. The following samples were collected for Chemical Analysis :-

- “i) stomach, loop of intestine and its contents.
- ii) 1/3<sup>rd</sup> liver, 1/2 of spleen, 1/2 each kidney.
- iii) Blood.
- iv) Hand washing of both hands with swab.
- v) Skin from entry wound, skin from exit wound and skin from controlled sample.
- vi) High vaginal swab and vaginal swab.
- vii) finger nail clipping of both hands.”

6.3 They opined the cause of death as “*haemorrhagic shock due to firearm injury to abdomen*”. The Postmortem Report at Exhibit – 133 is brought on record in his evidence. His evidence shows that, the Postmortem Report corroborates his testimony. There is no challenge to the above evidence in the cross-examination. The cause of death is also not disputed in the cross-examination. With this evidence available on record, the Prosecution has successfully established that, the Appellant’s wife died of firearm injury to the abdomen.

7. As regards the spot where the Appellant’s wife suffered the firearm injury, there is no dispute that, it was the residential home of the Appellant and Deceased. The Spot Panchnama at Exhibit – 109 is admitted by the defence before the learned Trial Court. Even the evidence of PW – 9 [Dr. Nitin Narayan Katekar], who investigated the Crime, shows that, he prepared the Spot Panchnama at Exhibit – 109.

8. From the above evidence on record, the circumstance that, the Appellant’s wife died of firearm injury in her abdomen at her residence is conclusively established.

#### **[ii] Oral Dying Declaration**

9. It is submitted by the learned Advocate for the Appellant that, the evidence of informant that, he heard the utterance of the Deceased that, her husband fired bullet on her is liable to be discarded, being the

improvement from his report and no corroboration from the other Prosecution's witnesses. He submitted that, though the cell phone of the Deceased containing the call recordings was seized and produced before the Court, the call recordings were not played during the evidence of the relevant witnesses for identification of the voice and therefore, it will not be of any assistance to the Prosecution.

9.1 On this point, the learned Advocate for the Appellant relied on the following Judgments :-

- [a] **Ziyouddin Burhanuddin Bukhari Vs. Brijmohan Ramdass Mehra and Ors. ; AIR 1975 SC 1788 - MANU/SC/0277/1975 ;**
- [b] **Smt. Shobha Sonba Raut Vs. The State of Maharashtra, in Criminal Appeal No.103/2017 ;**
- [c] **Anil Krishnarao Apashingkar Vs. The State of Maharashtra ; 2021 Criminal Law Journal 4629 - MANU/MH/1406/2021 ;**
- [d] **Ram Singh and Ors. Vs. Ram Singh ; AIR 1986 SC 3 - MANU/SC/0176/1985 ;**
- [e] **Devidas Harichandra Bhaskar Vs. The State of Maharashtra, in Criminal Appeal No.918/2015 ;**

10. It is submitted by the learned Addl. P.P. for Respondent No.1 - State and learned Advocate for Respondent No.2 that, the evidence of PW - 1 [Shashank Jalindar Pawar] and PW - 3 [Vrundawani Shashank Pawar], who were the father and mother, respectively of the Deceased, shows that, on 25/01/2018 around 08.58 a.m., before the incident, the Deceased made phone call to PW - 3 [Vrundawani Shashank Pawar] and narrated the incident of quarrel picked up by the Appellant with her in the late night and raised doubt on her character. The evidence of parents further shows that, after

the said phone call, which ended with an assurance from PW - 3 [Vrundawani Shashank Pawar] that, they would give understanding to the Appellant and the Deceased was awaiting the call of her mother. PW - 3 [Vrundawani Shashank Pawar] called the Deceased on her mobile phone at 9.17 a.m., when the Deceased was being taken to the Hospital and Deceased stated that, the Appellant had shot her. They submitted that, the call recordings between the Deceased and PW - 3 [Vrundawani Shashank Pawar] were copied and sent to the Forensic Laboratory and were extracted in DVD in PDF format and also supplied to the defence. They further submitted that, the same were duly executed at Exhibit - 229, which were part and parcel of Exhibit - 183 and no objection was raised by the defence to exhibit the same.

**10.1** The learned Advocate for Respondent No.2 cited the Judgment in **Sonu @ Amar Vs. State of Haryana, in Criminal Appeal No.1418/2013**, of the Hon'ble Supreme Court of India dated July 18, 2017, in support of the said contention that, objection to the exhibiting of documents cannot be raised at appellate stage.

11. Initial part of the evidence of PW - 1 [Shashank Jalindar Pawar] is in respect of the marriage of his daughter [Deceased] with the Appellant, demand of dowry from the Appellant's side, sending of Deceased to her parents house as the remaining dowry amount was not given, transfer of the Appellant and other incident. The Appellant is acquitted for the offence punishable under Section 498-A of IPC and there is no Appeal by the Prosecution against the acquittal.

12. Further, the evidence of PW - 1 [Shashank Jalindar Pawar] shows that, in the morning of 25/01/2018 around 8.58 a.m., the Deceased called his wife PW - 3 [Vrundawani Shashank Pawar] on her mobile and narrated the incident of quarrel raised by the Appellant with her in the previous night and requested PW - 3 [Vrundawani Shashank Pawar] to give understanding to the Appellant. The said call lasted for ten [10] minutes and thirty seven [37] seconds. Thereafter around 09.17 minutes, when PW - 3 [Vrundawani Shashank Pawar] gave phone call to the Deceased, she heard the cry of Deceased and she was able to hear the conversation, which was going on at the other end of the call, wherein, the Deceased told the women, who accompanied the Deceased towards the Hospital, that '*my husband shot me*'. This witness i.e. PW - 1 was able to hear the said conversation. Immediately, he along with PW - 3 [Vrundawani Shashank Pawar] proceeded towards Yermala and on the way, they informed their relatives.

13. His cross-examination shows that, he did not narrate in his report lodged with the Police that, the Deceased uttered that '*my husband shot me*'. He further admitted that, he did not state in his report that, he informed his relatives about the incident. This clearly shows that, the said evidence of PW - 1 [Shashank Jalindar Pawar] that, he heard Deceased saying that, her husband shot her, was an improvement from his report. We agree with the submission of the learned Advocate for the Appellant that, it was the material omission. In cross, he admits that, the said utterance by the Deceased that, her husband shot her, was the serious matter. However, he did not inform the Police Station where he was posted. His testimony shows that, the Police Station where he was working was 100

meters away from his residence. He admits that, on that day, he did not give any written report to the Police Station in respect of the incident. This witness volunteered that, he had orally informed about the same to his Superior Mr. Kazi, P.S.I., however, there is no corroboration to the same. His evidence shows that, from Suvidha Hospital, the dead body was taken to Barshi Rural Hospital, wherein, he had gone with his brother PW - 2 [Chandraprakash Jalindar Pawar] where the Police were present. He admits that, in the said Rural Hospital, the Police asked him whether he had any complaint in respect of death of his daughter and at that time, he did not give any written report in respect of his daughter's death. It is really strange that, a person, who was in the Police Department and claims to have heard his daughter saying that, her husband shot her, doesn't report to the Police.

14. PW - 3 [Vrundawani Shashank Pawar], who was the mother of Deceased, though corroborates the evidence of PW - 1 [Shashank Jalindar Pawar] in respect of receiving the phone call from the Deceased, on 25/01/2018 at 8.58 a.m. narrating the previous night incident between the Appellant and Deceased and further making a phone call by her to the Deceased, her evidence nowhere shows that, the Deceased was heard saying "*her husband shot me*". Her evidence do not corroborate the testimony of PW - 1 [Shashank Jalindar Pawar] in respect of Oral Dying Declaration by the Deceased. On the contrary, she deposed that, during the phone call in the morning, the Deceased asked her to come along with her father to give understanding to the Appellant and thereafter, she and PW - 1 [Shashank Jalindar Pawar] left for Yermala. At that time, she made phone call on the mobile of the Deceased and

she heard noise as 'मम्मेव मम्मेव' and 'काकू काकू'. While on the way towards Yermala, her husband i.e. PW - 1 [Shashank Jalindar Pawar] received a phone call that, their daughter died. The evidence of PW - 3 [Vrundawani Shashank Pawar] falsifies the evidence of PW - 1 [Shashank Jalindar Pawar] in respect of Oral Dying Declaration.

15. The evidence of PW - 2 [Chandraprakash Jalindar Pawar], who was the brother of PW - 1 [Shashank Jalindar Pawar], shows that, when he was telephonically informed by the brother-in-law of the Deceased on 25/01/2018 that, the Deceased suffered heart attack and asked them to reach, he contacted PW - 1 [Shashank Jalindar Pawar] on the phone and he along with PW - 1 [Shashank Jalindar Pawar], PW - 3 [Vrundawani Shashank Pawar] and others proceeded towards Yermala. His evidence nowhere shows that, PW - 1 [Shashank Jalindar Pawar] informed him about the Oral Dying Declaration made by the Deceased. His evidence shows that, when they reached the Suvidha Hospital at Barshi, the persons residing in the neighbourhood of the Deceased told him that, the Appellant fired bullet on the Deceased. The said evidence in respect of the neighbours informing him that the Appellant fired bullet on the Deceased was an omission in his previous statement and also hearsay evidence. His cross-examination shows that, during the Inquest, the Police from Barshi asked him whether he had any complaint in respect of death of his niece. His evidence is of no assistance to the Prosecution to prove the circumstance of Oral Dying Declaration and nowhere corroborates the testimony of PW - 1 [Shashank Jalindar Pawar].

16. The evidence of PW - 9 [Dr. Nitin Narayan Katekar], who was the Investigating Officer, shows that, the Samsung Galaxy J-7 android mobile phone of the Deceased was seized from the Informant under the Panchnama at Exhibit - 147. The evidence on record nowhere shows that, the recorded conversation in the mobile of the Deceased was played at the time of recording the evidence of PW - 1 [Shashank Jalindar Pawar] and PW - 3 [Vrundawani Shashank Pawar]. It was necessary to play the same before the said witnesses for the purposes of identification of the voice. There can be no other view, as held in the above referred Judgments relied upon by the learned Advocate for the Appellant, on the point that, the recording of call was the document as defined by Section 3 of the Indian Evidence Act, 1872 [hereinafter referred to as 'the Evidence Act'] and they were admissible in evidence on satisfying the condition that, the voice of the person alleged to be speaking, must be duly identified by the maker of the record or by others who knew it. No doubt, the call recording in the said mobile phone of the Deceased was the primary evidence, however, mere exhibiting the same, sans no objection by the defence during the trial, will not be of any assistance to the Prosecution unless the same was played as observed above, for the purposes of identification of voices.

16.1 In the above referred Judgment cited by the learned Advocate for Respondent No.2, one of the contention of learned Senior Advocate appearing therein for the State was that, the CDRs were adduced in evidence without any objection from the defence and the Accused cannot be permitted to raise the point of admissibility of the CDRs at the appellate stage. It was the contention from the other side that, the objection, which

was raised by him pertains to inadmissibility of the document and not the mode of proof. By considering the various Judgments of the Hon'ble Apex Court, it is observed that, *the admissibility of document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it was a fundamental issue and further observed that, the mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage.*

17. The learned Advocate for the Appellant relied on the Judgment in **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Ors. ; MANU/SC/0521/2020**, delivered by three [3] Judge Bench of the Hon'ble Apex Court, wherein, the aspect of admissibility of electronic evidence was thoroughly considered. In Paragraph Nos. 30, 31 and 32 of the said Judgment, the following observations are made :-

*30. Coming back to Section 65B of the Indian Evidence Act, Sub-section (1) needs to be analysed. The Sub-section begins with a non-obstante clause, and then goes on to mention information contained in an electronic record produced by a computer, which is, by a deeming fiction, then made a "document". This deeming fiction only takes effect if the further conditions mentioned in the Section are satisfied in relation to both the information and the computer in question; and if such conditions are met, the "document" shall then be admissible in any proceedings. The words "...without further proof or production of the original..." make it clear that once the deeming fiction is given effect by the fulfilment of the conditions mentioned in the Section, the "deemed document" now becomes admissible in evidence without further proof or production of the original as evidence of any contents of the original, or of any fact stated therein of which direct evidence would be admissible.*

*31. The non-obstante Clause in Sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65B, which is a special provision in this behalf - Sections 62 to 65 being irrelevant for this purpose. However, Section 65B(1) clearly differentiates between the "original" document-which would be the original "electronic record" contained in the "computer" in which the original information is first stored-and the computer output*

*containing such information, which then may be treated as evidence of the contents of the "original" document. All this necessarily shows that Section 65B differentiates between the original information contained in the "computer" itself and copies made therefrom - the former being primary evidence, and the latter being secondary evidence.*

*32. Quite obviously, the requisite certificate in Sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where "the computer", as defined, happens to be a part of a "computer system" or "computer network" (as defined in the Information Technology Act, 2000) and it becomes impossible to physically bring such network or system to the Court, then the only means of proving information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate Under Section 65B(4). This being the case, it is necessary to clarify what is contained in the last sentence in paragraph 24 of Anvar P.V. (supra) which reads as "...if an electronic record as such is used as primary evidence Under Section 62 of the Evidence Act...". This may more appropriately be read without the words "Under Section 62 of the Evidence Act,...". With this minor clarification, the law stated in paragraph 24 of Anvar P. V. (supra) does not need to be revisited."*

17.1 It is also observed in the above Judgment that, Section 65-B of the Evidence Act does not speak of the stage at which the certificate must be furnished to the Court. It is further observed that, the Judgment in **Anvar P. V. Vs. P. K. Basheer and Ors.**; [2014] 10 SCC 473, as clarified in the Judgment [Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Ors. (*Supra*)] was the law declared by the Hon'ble Apex Court on Section 65-B of the Evidence Act.

18. As regards the electronic evidence in the nature of DVDs is concerned, which are exhibited, admittedly, they were not accompanied by the certificate as mandated by Section 65-B of the Evidence Act. Even the Prosecution did not produce the said certificate at any later point of time. Therefore, though they

were exhibited, the same would not be admissible for want of mandatory certificate under Section 65-B of the Evidence Act. Therefore, the secondary electronic evidence unaccompanied by the certificate under Section 65-B of the Evidence Act is necessarily to be kept out of consideration. As observed above, at the cost of repetition, though the mobile phone of the Deceased was available in the nature of primary evidence, for want of identification of voices in the recording stored therein, is of no aid to the Prosecution.

18.1 The Prosecution examined PW - 4 [Manik Keshav Aaglave] and PW - 5 [Anusaya Manikrao Aaglave], the landlord and landlady respectively, of the house, where the Appellant and Deceased were residing and also PW - 6 [Avinash Dhanpal Khillare], one of the tenant in the same premises, where the incident had taken place and who reached the spot of incident after hearing the sound. Their evidence nowhere shows that, the Deceased was in a position to talk and she made any disclosure to them in respect of the cause of her death. The evidence of PW - 4 [Manik Keshav Aaglave] and PW - 6 [Avinash Dhanpal Khillare] shows that, they transported the Deceased in a four [4] wheeler to the Hospital from the spot of incident. However, their evidence nowhere shows that, the Deceased was in a position to talk and made any utterance in respect of the cause of her death.

19. In view of the above discussion, the circumstance of the Oral Dying Declaration is not conclusively proved by the Prosecution.

**[iii] Use of firearm from the close range**

20. It is submitted by the learned Advocate for the Appellant that, the Prosecution relied on the evidence of Ballistic Expert to show that, the bullet was fired from the close range. The evidence of Ballistic Expert, who is examined as PW - 7 [Urvi Pramod Mhasilkar], shows that, for the first time, she deposed before the Court that, the weapon was fired from the close range and there is no explanation to support the said findings. The manual, which the said Ballistic Expert relied, was not brought on record by the Prosecution. Some of the questions referred by the Investigating Officer to the Ballistic Expert in respect of the use of firearm were not replied by the Ballistic Expert and deposed that, the answers to the said questions were in the form of CA reports. As the Investigating Officer also sent the questionnaires to the Medical Officer in respect of distance, from which, the bullet was fired, putting questions by the defence to the Medical Officer in respect of distance of use of firearm cannot be said to be unwarranted. There is nothing to show that, the Ballistic Expert was having sufficient experience as she was young by age. The Ballistic Expert agrees with the principle of Dr. Reddy's Medical Jurisprudence in respect of the distance which comes within the close range. The evidence of Ballistic Expert is insufficient to prove that, the bullet was fired from the short distance.

20.1 In support of his submission, he relied on the Judgment in **Pankaj Vs. State of Rajasthan, in Criminal Appeal No.2135/2009 dated September 9, 2016 passed by the Hon'ble Supreme Court**, wherein, there was variance in the evidence of PW - 8 and PW - 6 therein, with regard to the distance between the Deceased and the Appellant - Accused and in that fact

situation, the Phenomena observed in Firearm Injuries or Short Holes on Clothing, from Modi's Jurisprudence was referred, wherein, *range in respect of revolver / pistols, wherein, flame / burning / scorching / singeing shown was within about 5 - 8 cm. generally is mentioned.* It is further observed in the said Judgment that, in a case where death due to injuries or wounds caused by a lethal weapon, it is always the duty of the Prosecution to prove by expert evidence that, it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused. In that case, it was observed that, the contradiction i.e. the distance of fire, is material and it was held that, it would not be appropriate to convict the Appellant - Accused by ignoring such an important aspect.

20.2 He also relied on the Judgment in **Archana Tulsiyani Vs. Ajay Prakash Mishra, in Criminal Appeal No[s]. 2019-2021/2012, passed by the Hon'ble Apex Court**, which was one of the Appeals from the order of acquittal. In that case, there was no evidence of any strained relations between the Appellant and the Deceased. It was observed that, merely on the basis of the blackening around the wound to presume that the firing was done at a close range and therefore it was a case of suicide was unsustainable. The treating doctor expressed no opinion of the injury being suggestive of suicide.

21. On the other hand, it is submitted by the learned Addl. P. P. for Respondent No.1 - State and learned Advocate for Respondent No.2 that, the evidence of Ballistic Expert corroborated by the CA reports and the cause of death clearly established that, the bullet was fired from the close range. Though the Medical Officer, who performed the Postmortem, in

the cross-examination, deposed that, the injuries mentioned in the Postmortem were possible if the firearm was used from the point-blank range, it would not affect the evidence of Ballistic Expert. Nothing has come in the evidence of Ballistic Expert that, the bullet was fired from the point-blank range. The Medical Officer declined that, it was the case of suicide and his evidence that, it was Homicidal Death remained unshaken.

22. The Ballistic Expert is examined as PW - 7 [Urvi Pramod Mhasilkar]. We are not impressed by the arguments of the learned Advocate for the Appellant that, looking to the age of Ballistic Expert, which was shown as 27 years at the time of evidence and might be 23 years old in 2018 when she did the chemical examination of the firearm, her evidence cannot be taken seriously. Her evidence shows that, she was holding the Master Degree in Forensic Science and working as the Assistant Chemical Analyser in Directorate of Science Forensic Laboratory Kalina, Mumbai. She did the chemical examination of the Muddemal articles referred to her by PW - 9, Investigating Officer [Dr. Nitin Narayan Katekar] vide Exhibit - 119. The results of examination, reads as under :-

*“The Exhibit - 1, which was 9 mm caliber pistol, was in working condition. Residue of fired ammunition-nitrite was detected in barrel washing of the said pistol showing that, it was used for firing prior to its receipt in the laboratory. The empty magazine which was Exhibit - 2 easily sat in the magazine cavity of 9 mm caliber pistol and having capacity to accommodate about 9 mm pistol cartridge. Randomly selected one 9 mm pistol cartridge from Exhibit - 3 was successfully test fired through 9 mm caliber pistol. The empty in Exhibit - 4 was fired from 9 mm caliber pistol. He identified the CA report at Exhibit - 120 as the same, which was result of analysis done by her on the said firearm.”*

23. Her evidence further shows that, she examined the articles referred vide letter dated 26/01/2018, which were Exhibit - 1 - Skin piece at the site of entry wound, Exhibit - 2 - Skin piece at the site of exit wound and Exhibit - 3 - Control skin piece and recorded her findings in CA report at Exhibit - 122. Her evidence shows that, on examination, there was detection of metallic lead and copper in presence of blackening and powder residues around the shot hole on skin piece in Exhibit - 1 and detection of metallic lead and copper in absence of blackening and powder residues around the shot hole on skin piece in Exhibit - 2 was consistent with wipe and passage of copper jacketed bullet having been fired from the close range of the weapon. On chemical analysis of Exhibit - 1 - Skin piece, she found metallic lead and copper in presence of blackening and powder residue around the shot hole in Exhibit - 1, which meant that, it was consistent with wipe and passage of copper jacketed bullet having been fired from close range of weapon. The distance between the target and muzzle end of the weapon in close range was about one [1] ft. to two [2] ft. Her evidence further shows that, she followed the procedure given in the SOP manual or working procedure manual issued by the Central Forensic Science Laboratory, Central Government. Not bringing on record the copy of the said SOP manual or working procedure is of no consequence. Neither the said witness was called upon by the defence to get the copy of the same. Though she admits that, for the first time in the Court, she deposed that, the distance between the target and muzzle end of the weapon was in close range about one [1] to two [2] ft, the CA report at Exhibit - 122 prepared by her clearly records the result of analysis, which reads as under :-

“ Detection of metallic lead and copper in presence of blackening and powder residues around the shot hole on skin piece in Exhibit 1 and detection of metallic lead and copper in absence of blackening and powder residues around the shot hole on skin piece in Exhibit 2 is consistent with wipe and passage of copper jacketed bullet having been fired from the **close range of the weapon**.

The skin piece in Exhibit 3 used as control sample.”

24. This witness fairly admitted in the cross-examination that, the Investigating Officer [PW - 9] had put specific questions in the communication dated 28/01/2018 at Exhibit - 199 and she did not give answers to each and every questions, particularly, Question Nos.13 and 15 and positively replied the suggestion that, the CA reports at Exhibit - 120 to 123 and Exhibits - 125 to 127 were the answers to the said queries made by the Investigating Officer vide Exhibit - 119. We do not see any infirmity on the said point. The said CA reports are the documents, which are admissible in evidence pursuant to the provisions of Section 293 of Cr.P.C. Her evidence shows that, she agreed with the principle of Dr. Reddy's Medical Jurisprudence that, the close range means within 5 to 8 centimeters. She further agreed that, there is long range category, which means more than three [3] ft and long range firing always happens in Homicidal Death. She denied the suggestion that, the opinion given by her that close range means one [1] ft. to two [2] ft. distance, is a wrong opinion. Her cross-examination shows that, she followed the working procedure manual issued by the Central Government and her opinion regarding close range distance was based on the said manual. Her evidence is consistent that, her finding of analysis in respect of the distance of firearm in the case on hand was in close range. The cross-examination could not create any dent in her evidence, which was corroborated by the CA reports.

25. The admission by PW - 8 [Dr. Santosh Baburao Bhoi], the Medical Officer that, the injuries mentioned in Column No.17 of the Postmortem of the Deceased were possible if the firearm was used at the point-blank range, will not affect the testimony of PW - 7 [Urvi Pramod Mhasilkar] in respect of her findings and opinion and also in respect of firearm and the articles sent to her for the examination. PW - 8 [Dr. Santosh Baburao Bhoi], in his cross-examination, admits that, finding gunpowder residues on the clothes of the Deceased was one of the circumstance showing the close range shot. On the point of distance, from which, the firearm was used, in our considered view, the evidence of Ballistic Expert, who is the Expert on the subject of Ballistic, would have more value or weightage as compared to the evidence of Medical Officer, who performed the Postmortem. The aforesaid authorities relied upon by the learned Advocate for the Appellant will not be of any assistance to discard the testimony of the Ballistic Expert. There is one more reason, which completely rules out the possibility that, the firearm used in the case on hand was fired from the point-blank range. Undisputedly, the firearm i.e. pistol was sent for chemical analysis. The CA report at Exhibit - 181 shows that, no blood was detected on the pistol. When human blood was detected on the clothes i.e. maxi, knicker and one clothe piece of the Deceased in CA report at Exhibit - 182, it is highly unlikely that, no blood would come on the firearm if it is fired from the point -blank range. Absence of blood on the firearm makes the testimony of Ballistic Expert more concrete and rules out the possibility that, it was fired from point-blank range.

26. In view of the above discussion, the Prosecution conclusively proved that, the pistol / firearm was fired from the close range and not from the point-blank range.

**[iv] Absence of gunpowder on the hands of Deceased**

27. It is submitted by the learned Advocate for the Appellant that, the circumstance of absence of gunpowder on the hands of Deceased would not be of any assistance to the Prosecution, as the evidence of the Prosecution witnesses, who reached the spot of incident on hearing the sound shows that, the ladies rubbed the hands of the Deceased and there was movement of the dead body from the spot to the Hospital. Because of those factors, no gunpowder was detected on the hands of Deceased. The evidence of PW - 8 [Dr. Santosh Baburao Bhoi] shows that, when the dead body was received, the hands of Deceased were not protected by any paper bag or by any means. He submitted that, this circumstance will not lead to the conclusion that, the Deceased had not used the firearm.

28. It is submitted by the learned Addl. P.P. for Respondent No.1 - State and learned Advocate for Respondent No.2 that, had the Deceased fired on herself by using the firearm, the gunpowder would certainly be detected on her hands. The evidence of Ballistic Expert denied the suggestion that, due to rubbing of the hands of Deceased, the gunpowder would vanish. It is submitted that, non finding of the gunpowder on the hands of Deceased proved that, the firearm was not used by her.

29. The evidence of PW - 7 [Urvi Pramod Mhasilkar], the Ballistic Expert, shows that, by communication dated 26/01/2018, her office received two exhibits containing two sealed plastic container having one Exhibit - 1 - Gauze piece in

liquid put in a plastic container labelled content - hand wash of right hand marked Exh. No.C-3 and Exhibit - 2 - Gauze piece in liquid put in a plastic container labelled content - hand wash of left hand marked Exh. No.C-4. Both exhibits were having labells by name Mona @ Monali Vinod Chavan. She started the analysis on 13/03/2018 and completed it on the same day and her result was that, *nothing of note in relevance to the fired gunshot residues were detected on the cotton swab in Exhibit - 1 and Exhibit - 2.* She prepared the CA report at Exhibit - 121. She denied the suggestion given in her cross-examination that, after firing, if a third person rubs both the hands of the person, who used the firearm, the gunshots residues will vanish. It is true that, it has come in the evidence of PW - 5 [Anusaya Manikrao Aaglave], who was the landlady of the premises where the incident had taken place, that when she went on the spot of incident after hearing the sound, Deceased was lying on the floor and five [5] to six [6] women came to the spot and rubbed the legs and head of the Deceased. Her evidence do not show that, the said women rubbed the hands of Deceased.

30. In the evidence of PW - 7 [Urvi Pramod Mhasilkar], the CA report at Exhibit - 123 is brought on record. It is in respect of nail clippings of both the hands of Deceased and the result of analysis was that '*nothing of note in relevance to the fired gunshot residues were detected on the finger nail clippings in Exhibit - 1.*' Even if the contention of the learned Advocate for the Appellant that, due to rubbing of hands, the gunpowder residues will vanish is accepted for the sake of argument, it is unlikely that, the gunpowder residues on the finger nail would disappear or vanish. The evidence on record clearly established that, no gunpowder residues were found on the hands and nails of the Deceased.

**[v] Body part where the firearm injury was caused**

31. It is submitted by the learned Advocate for the Appellant that, it is not that, because the firearm injury was on the part of abdomen or just below the chest, it was not the case of suicide. The Medical Officer admitted in cross-examination that, it depends on the person who choose the part of body to commit the suicide. According to the Medical Officer, generally in suicidal cases, the firearm injury is seen on the head and chest. In the case on hand, the injury is just below the chest and therefore, the circumstance of the body part will not be of any relevance.

32. It is the contention of the learned Addl. PP for Respondent No.1 – State and learned Advocate for Respondent No.2 that, the evidence of Medical Officer shows that, generally the firearm injury in the case of suicide is on the head and chest, which is not so in the present case, and thus it rules out the Suicidal Death.

33. Undisputedly, the Medical evidence has established that, the firearm injury on the Deceased was on anterior aspect of abdomen. The wound was 16 cm. infero medial to left nipple, 18 cm. infero medial to right nipple, 13 cm. from the umbilicus and 25 cm. from the sternal notch. The firearm injury suffered by the Deceased was neither on the head nor on the chest, which according to the Medical Officer was the general pattern in suicidal cases.

**[vi] Blood on the towel of the Appellant**

34. The evidence of PW – 5 [Anusaya Manikrao Aaglave], the landlady of the premises where the incident had taken place, shows that, when she went on the spot of incident after hearing

the noise, she noticed that, the Appellant had wrapped the towel and was having soap foam on his body and head. This aspect that, the Appellant had wrapped the towel at the time of incident is not in dispute as seen from the cross-examination of PW - 4 [Manik Keshav Aaglave], the landlord of the place of incident, as the suggestion was given to him that, the Appellant was standing in the house with towel and foam on his face and head. The evidence of PW - 9 [Dr. Nitin Narayan Katekar], the Investigating Officer, shows that, he seized one white turkish towel, when he seized the firearm, one bullet shell and blood stains found on the floor from the spot of incident. The seized articles were separately seized with labels and signatures of the panchas. He deposed of blood stains on the towel, which was Article No.3. The evidence of PW - 7 [Urvi Pramod Mhasilkar], Ballistic Expert, shows that, the articles, which were received for examination vide Exhibit - 199 from PW - 9 [Dr. Nitin Narayan Katekar], Investigating Officer was having one towel Exhibit - 5 and CA report in that respect was at Exhibit - 120 showed no residue of gunshot. However, the CA report at Exhibit - 181 brought on record in the evidence of PW - 9 [Dr. Nitin Narayan Katekar] shows that, human blood was detected on Exhibit - 5 - towel. The said aspect as seen from the cross-examination of the witnesses is not challenged.

### **[vii] Motive**

35. It is submitted by the learned Advocate for the Appellant that, though there is no dispute in respect of the evidence of the parents of Deceased that, the Deceased narrated the incident of previous night when the Appellant came home and he suspected someone in his house and the quarrel took place between the Appellant and the Deceased and the Appellant

called his Lawyer in respect of divorce, cannot be said to be the Motive to commit the Murder. He further submitted that, the evidence on record goes to show that, the Deceased was not getting pregnant for which she was unhappy and therefore the Deceased had the reason to commit the suicide.

36. It is submitted by the learned Addl. P.P. for Respondent No.1 - State and the learned Advocate for Respondent No.2 that, the evidence of parents of the Deceased clearly established that, the Appellant was suspecting the character of Deceased and he had the Motive to commit the Murder of his wife.

37. The evidence of PW - 3 [Vrundawani Shashank Pawar], who was the mother of Deceased, shows that, the Deceased made a phone call to her in the morning on the day of incident and narrated about the quarrel raised by the Appellant with her on the point as to how the light in the house situated opposite side to their residence was burning and it got switched off when he reached home. The said evidence was not challenged. The phone call between the Deceased and the mother around 08.58 hours on the day of incident is not disputed by the defence. True it is that, the said evidence of PW - 3 [Vrundawani Shashank Pawar] was hearsay in nature. However, by virtue of Second Part of Section 32[1] of the Evidence Act, it becomes relevant. The said part reads as under:

**“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant - ... ..**

**(1) when it relates to cause of death - ... ..**

Such statement are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) .... ..

(3) .... ..

(4) .... ..

- (5) ....  
 (6) ....  
 (7) ....  
 (8) .... ”

37.1 Useful reference can also be made on this point to the observations in *Sharad Birdhichand Sarda Vs. State of Maharashtra* [*Supra*], which is further referred in several Judgments. In **Amar Singh Vs. State of Rajasthan; [2010] 9 SCC 64**, the said pronouncement is considered and held as under in Paragraph Nos.19 and 20.

*“19. In **Pakala Narayana Swami v. King Emperor** [AIR 1939 PC 47] Lord Atkin held that circumstances of the transaction which resulted in the death of the declarant will be admissible if such circumstances have some proximate relation to the actual occurrence. The test laid down by Lord Atkin has been quoted in the judgment of Fazal Ali, J. in **Sharad Birdhichand Sarda v. State of Maharashtra** (supra) and His Lordship has held that Section 32 of the Indian Evidence Act is an exception to the rule of hearsay evidence and in view of the peculiar conditions in the Indian Society has widen the sphere to avoid injustice. His Lordship has held that where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statements would clearly fall within the four corners of Section 32 and, therefore, admissible and the distance of time alone in such cases would not make the statements irrelevant.*

*20. The difference in the English Law and the Indian Law has been reiterated in **Rattan Singh v. State of H. P.** (supra) and it has been held therein that even if the deceased was nowhere near expectation of death, still her statement would become admissible under Section 32 (1) of the Indian Evidence Act, though not as a dying declaration as such, provided it satisfies one of the two conditions set forth in this sub-section. The argument of Mr. Sharma, therefore, that the evidence of PW-4 and PW-5 regarding the statements made by the deceased before them are hearsay and are not admissible is misconceived.”*

38. The above evidence clearly established that, the Appellant suspected the chastity of his wife and had Motive to do away with her.

**Further Discussion :-**

39. The Prosecution on the basis of the evidence available on record conclusively established that, the Deceased died due to firearm injury. There is no dispute on the aspect that, the firearm, from which the bullet was fired and which caused the death of the Appellant's wife, was the service revolver of the Appellant, who was in the services of the Police Department. Though in his written 313 statement at Exhibit - 199, it is stated that, the father of Deceased was in the Police Department and had undergone the training to handle the firearm, the father of Deceased had given the training to the Deceased, there is no iota of evidence or material on record to even remotely suggest that, the Deceased was having knowledge of operating the firearm. Merely because the Deceased was the daughter and wife of the Policemen, it cannot be inferred that, she knew how to operate the firearm. The firearm is not such a weapon which can be used for firing without having knowledge of its operation. In the case at hand, undisputedly it was the pistol.

40. As seen from the evidence of Ballistic Expert corroborated with the CA reports, no residues of fired gunshot were found on the hands and nail clippings of the Deceased. The Ballistic Expert evidence has conclusively established that, the bullet was fired from the close range and not from the point-blank range as discussed above. The CA report do not show blood stains on the pistol. As seen from 313 statement recorded by the learned Trial Court, the CA reports were referred and the Appellant replied it to be false. The human blood stains were found on the towel, which was seized from the spot of incident as discussed above and there is no dispute that, the Appellant at

the time of incident had wrapped the towel. Neither there is evidence nor it is case of either side that, the Appellant had taken the Deceased near him to see what happened while he was in towel. Under such circumstances, human blood stains on the towel becomes a strong circumstances against the Appellant. The body part, where the firearm injury is caused is not consistent with the suicidal pattern as seen from the evidence discussed above. If the defence of suicide is to be appreciated, the Deceased would have to take first the pistol in hand, bend the hand from the elbow, take it towards the stomach, bend the wrists and thereafter fire, by holding the firearm either by one hand or both the hands. It would be a very strenuous task to use the firearm in such a manner to commit suicide. If a person wants to commit suicide, he or she would go by the easiest manner. True it is that, no residues of fire gunshot were found on the hands of the Appellant. Admittedly, the Appellant was seen with the foam of soap on his person when the witnesses reached on the spot after hearing the voice and the possibility of vanishing the residues of fire gunshot due to the soap cannot be ruled out.

41. The proved circumstances, completely rule out the possibility of self inflicted gunshot or suicidal firing. Admittedly, except the Appellant and Deceased, no one was present in the house when the incident had taken place. The evidence on record goes to show that, the chance prints were taken from the pistol and result of analysis as per Exhibit - 180 was that, they were unfit for comparison and any practical utility. This report will not undermine the above referred proved circumstances. The proved circumstances as discussed above are inconsistent with the defence of the Appellant that his wife committed

suicide. The prove circumstances i.e. use of service pistol, death due to firearm injury, no residues of fire gunshot on the hands and nail clippings of the Deceased, no blood stains on the firearm, blood stains on the towel and body part where the Deceased suffered the firearm injury are consistent with the hypothesis that, it is only the Appellant, who fired the pistol and caused the death of his wife. The proved circumstances unerringly established that, the chain which unerringly shows that, the death of Appellant's wife was Homicidal. The Charge for the offence punishable under Section 302 of IPC is clearly established from these proved circumstances. There can be no dispute in respect of settled legal position that the circumstance not put to the Accused in his examination under Section 313 of Cr.P.C. cannot be used against him as observed in **Sujit Biswas Vs. State of Assam; 2013 [4] Supreme 509**, cited by the learned Advocate of the Appellant. We have not considered the call recordings, which were heavily relied upon by the learned Trial Court in its Judgment without putting to the Appellant in the statement under Section 313 of Cr.P.C.

42. To base the conviction for the offence punishable under Section 201 of IPC, the learned Trial Court has observed as under :-

*"123. The evidence of crime i.e. Pistol and bullet shell were removed from the spot of incident immediately by the accused. He washed his hands, face and hair with soap removing the Gun shot residues significant in determining as to who was holding firearm. He also deleted the calls dated 25-01-2018 from his Mobile phone thereby tried to delete the conversation with one Advocate making inquiry of divorce proceeding to be filed and also his conversation with the deceased in the night on 24-01-2018. But it is recovered by the Digital Experts in Forensic Science Laboratory in Exh.229. The Mobile phone of deceased was used by PW-6 after the incident occurred while it was kept in the hands of deceased when informant arrived. The attempt of removal of Pistol and bullet shell from spot, Gun powder residues from hands, allowing neighbours to press the*

*chest of the deceased without disclosing Gun shot fired and deleting phone calls from Mobile phone, is with a view of eliminating the evidence of crime. He was very well knowing that, offence has been committed, but with an intention of screening himself from legal punishment, he caused disappearance of evidence.*

*The accused is a Police Officer Assistant Police Inspector incharge of Police Station, Yermala. He was within the knowledge of evidence of firearm, gun powder residues and its significance. He is not a layman not knowing the procedure after Gun shot was fired.*

*124. Section 201 of I.P.C. comprises two aspects which are disappearance of evidence and giving false information with the intention of screening the offender from legal consequences. It was the case of murder and inspite of knowledge that the deceased had Gun shot injury, allowed others to press her chest. He also avoided the immediate medical aid which would have extended her life till arrival of her relatives. He also raised shouts when the deceased was trying to speak about the cause of death. This was disappearance of evidence by the accused No.1 Vinod Chavan with the purpose of screening himself from lawful punishment. Hence, the prosecution proved the offence punishable under Section 201 of I.P.C.. Thus, point No.4 is answered in the affirmative.”*

43. If we see the Charge for the offence punishable under Section 201 of IPC, it was in respect of causing disappearance of bullet fired from the service revolver and not for any other acts. It was not for deletion of calls from the mobile. As seen from the evidence available on record, the landlord and landlady went to the house of the Appellant soon after they heard the sound and cry of the Appellant and after they knocked the door and went inside, they noticed that, the Appellant was standing. Not finding of the fired bullet on the spot of incident will not itself lead to the inference that, the Appellant caused disappearance of the fired bullet. In absence of clear evidence to attract the essential ingredients for the offence punishable under Section 201 of IPC, we are of the view that, the conviction for the offence punishable under Section 201 of IPC would be unsustainable.

44. In view of the above discussion, the conviction and sentence for the offence punishable under Section 302 of I.P.C. is maintained and the conviction and sentence for the offence punishable under Section 201 of IPC needs to be quashed and set aside. Hence, the following order :-

**ORDER**

- [I] Criminal Appeal is partly allowed.
- [II] The conviction and sentence awarded by the learned Trial Court to the Appellant for the offence punishable under Section 201 of I.P.C., is quashed and set aside.
- [III] The Appellant is acquitted for the offence punishable under Section 201 of I.P.C.
- [IV] The conviction and sentence awarded by the learned Trial Court to the Appellant for the offence punishable under Section 302 of I.P.C. is maintained.
- [V] The Record and Proceedings be sent back to the learned Trial Court.
- [VI] In view of the disposal of Appeal, Criminal Application stands disposed of accordingly.

**[NEERAJ P. DHOTE, J.]**

**[R. G. AVACHAT, J.]**

**Sameer**