

Shamim Rahmani Etc vs State Of U.P on 28 April, 1975

Equivalent citations: 1975 AIR 1883, 1975 SCR 315, AIR 1975 SUPREME COURT 1883, 1975 4 SCC 652, 1975 (1) ALL LR 565, 1975 SCC(CRI) 667

Author: N.L. Untwalia

Bench: N.L. Untwalia, Syed Murtaza Fazalali

PETITIONER:
SHAMIM RAHMANI ETC.

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT 28/04/1975

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
FAZALALI, SYED MURTAZA

CITATION:
1975 AIR 1883 1975 SCR 315
1975 SCC (4) 652

ACT:
Penal Code-S. 201-Ascertaining full facts before giving
information to police-If obligatory.

HEADNOTE:

The appellants were brother and sister and were living in different localities of the city. The sister developed illicit intimacy with the deceased, but finding that he was not giving her exclusive attention, fired a shot at him when he came to her house.

On hearing about the incident the brother gave information to the police that his younger brother had told him that he "did not know how his sister took his (appellant's) gun outside and somehow a fire was shot" and that the bullet hit the deceased who had fallen and was bleeding.

The trial court convicted the sister under s. 302, I.P.C. The brother was charged with an offence under s. 201, I.P.C. and was convicted and sentenced to three years'

rigorous imprisonment. The High Court affirmed the convictions but reduced the sentence against the brother to one year.

Dismissing the appeal of the sister and allowing the appeal of the brother,

HELD : All the ingredients necessary to be established for bringing home the charge under s. 201, to the appellant were not proved beyond reasonable doubt. He may have known or may have reason to believe that an offence of murder had been committed by his sister. But the other possibility that he may not have known or may have not reason to believe that the offence of murder had been committed by his sister could not be ruled out. He may have only suspected. More facts were yet to be known. He did nothing wrong in rushing to the police station and giving the barest information in writing. The prosecution could not unfold that the younger brother had told anything further to the appellant. It was not obligatory or necessary for the appellant to probe the matter any further on the spot before rushing to the police station. [326 GH 327-B-D]

JUDGMENT:

Criminal Appellate Jurisdiction " Criminal Appeals Nos. 121

-123 of 1973.

Appeal by special leave from the judgment and order dated 10-4-1973 of the Allahabad High Court in CrI. Appeal Nos. 2224 & 2228 of 1969 and Cr. M. P. No. 1547 of 1973. Yogeshwar Prasad, Keshava Sahai, S. K. Bagga, S. Bagga, Rani Arora and Meena Bhatia, for the appellants. D. P. Uniyal and O. P. Rana, for the respondent. The Judgment of the Court was delivered by UNTWALIA, J., These are three appeals by special leave. One, of them was directed from some interlocutory order of the High Court and had become infructuous. Mr. Yogeshwar Prasad, learned counsel for the appellants asked us to dismiss that appeal as being infructuous. We accordingly do so. In one of the remaining two appeals, the appellant is Kumari Shamim Rahmani. She has been convicted under section 302 Indian Penal Code for committing the murder of Dr. Hari Om Gautam, A sentence of life imprisonment has been awarded to her. In the other appeal the appellant is Shri Amir Ahmad Rahmani, elder brother-of Shamim. He is said to have lodged a false information at the Police Station in connection with the said murder with the intention of screening his sister from legal punishment. He has been convicted under section 201 of the Penal Code. The Trial Judge imposed a sentence of three years' rigorous imprisonment on him but the High Court has reduced it to one year.

The murder of the Doctor was the culmination of the wrong and vicious path of love and lust between him and appellant Shamim. As is not uncommon in such type of love affairs, the girl found the arms of her lover getting loose and cold. It resulted in her frustration. In a jealous and

revengeful attitude she used her arms on a gun and shot her lover dead. Thus she landed herself in the long arms of law and suffered the conviction for murder. We may observe at the outset that in the conduct of the case on behalf of the appellants in the Trial Court as also in the High Court there has been overdoing and too much hair splitting but all in vain. On reading the two judgments of the Courts below and on perusal of the relevant materials and pieces of evidence in the case and after hearing the fair and able argument of Mr. Yogeshwar Prasad we have come to the conclusion that not only Shamim's appeal is concluded by the concurrent findings of fact recorded by the two courts below with which but for very strong reasons, this Court is loathe to interfere, the findings in our opinion, are absolutely correct. The exhaustive criticism of the prosecution case and the evidence adduced by it has been fully dealt with by the High Court as also by the Trial Court. The appeal of appellant Amir Ahmad, for the reasons to be stated hereinafter, is fit to succeed.

We proceed to state the facts of the case very briefly. We also do not think it necessary to deal with, in any detail, all the points urged on behalf of appellant Shamim as almost all of them were repetitions of the arguments advanced in the High Court and rightly rejected by it. It will be hardly of any use to paraphrase the judgment of the High Court for the purpose of affirming it.

The appellants' father was one Azizur Rahman Khan since deceased. Mostly he lived at a place outside the City of Lucknow. In a rented house at 23, Kandhari Lane, Police Station Kaiserbagh, Lucknow lived Smt. Sikander Jahan, mother of the appellants, appellant Shamim, her elder sister Km. Naseem Rahmani and her younger brother a boy of tender age named Mohammad Ahmad Rahmani alias Sheikh. The appellants have another brother named F.A.A. Rahmani who at the relevant time was Personal Assistant to a Minister of the Central Government and was living in Delhi. Appellant Amir Ahmad was living in another house in the City of Lucknow at No. 24, New Berry Road, Police Station Hazratganj, Lucknow. He had a shop where he dealt in spare parts of tractors.

At the time of the occurrence which took place at about 11.00 or 11.15 p.m. on the 11th July, 1968 appellant Shamim was a College going girl and was about 22 years of age. Shortly before in the year 1967 she had passed her B. Sc. examination. Dr. Gautam was about 35 years of age at the time of occurrence. He was a married man and had his wife living. There were three children born of their wedlock. Dr. Gautam was attached to Balrampur hospital, Lucknow in the year 1966. Azizur Rahman had a paralytic attack and was admitted in Balrampur hospital on 7-5-1966. He was treated as an indoor patient in a special ward of the hospital for about 10 days by Dr. Gautam under the supervision of senior Doctors. The family members including Shamim were visiting Azizur Rahman in the hospital and the love episode started there between the voluptuous Doctor and the unscrupulous Shamim. Azizur Rahman after being discharged from the hospital lived in the Kandhari Lane house with his family members namely his wife, the two daughters and the young boy, for sometime. Dr. Gautam used to visit and look after Azizur Rahman at the house also. The love affair of Gautam and Shamim went on progressing and reached a scandalous height. Gautam started visiting Shamim at her house too frequently almost daily and sometimes more than once in a day. He used to take her for joy rides on his Scooter. Records of this case do not disclose any resentment or protest on the part of the family members of Shamim although being unmarried she was carrying on almost openly with an elderly married person. But the mohalla people did not like

this drama of love affair being enacted in their locality without any sense of shame or scruples. The various love letters written by Gautam to Shamim and some chits written by the latter, which were recovered from her possession after the occurrence showed that their love had reached the low level of sexual lust also. It appears Gautam was a handsome looking man and Shamim was infatuated in her love with him. She wanted his exclusive attention. And what a curious manifestation of human psychology and selfishness it was, that though Shamim had encroached on the exclusive region of Gautam's wife, she was not prepared to tolerate any encroachment in the realm of her love by any other girl. Materials in this case do indicate that the Doctor was a free-lancer and a licentious man. He often used to visit cinemas, theaters, restaurants and was always after pastures new. At times Shamim used to resent and feel highly disgusted with the free lancing habits of Gautam so much so that on one occasion in January, 1968 it is said that she slapped Gautam in front of Quality Restaurant situated at Hazratganj. For sometime before the occurrence Gautam endeavoured to be treacherous and wriggle out of her affairs with Shamim. She wanted to keep him tightly in her clutches. Gautam was feeling it difficult to get himself released from her clutches as she was in possession of his love letters. The frequency of his visits to her house, however, lessened. On the 9th of July, 1968 he was found going on scooter with another girl riding on its pillion. The fact was reported to Shamim by Ganesh a servant of appellant Amir Ahmad. This added sufficient quantity of fuel to the fire of jealousy, and hatred which was already burning in the heart of Shamim.

There were frequent quarrels between Shamim and Gautam. On the 10th July, 1968, Gautam visited Shamim's house in the evening, although for 10 or 12 days before the occurrence, the frequency of his visits had diminished. In that visit there was a quarrel between them. On the 11th July, 1968 Gautam visited Shamim again in her house at about 3.00 p.m. There was an altercation between them. When the Doctor was leaving the house, Shamim asked him to come for the last time in the evening under the pretext of helping her in filling up her admission form.

In the evening of the 11th July, Dr. Gautam first went with his wife to the house of a Principal of a College for a social call. P.W. 17 Mohd. Sabir Khan was posted as Deputy Superintendent of Police, C.I. Dat Lucknow at the relevant time. He Was a patient and a friend of Dr. Gautam. He was suffering from a severe headache and Dr. Gautam went to the house of the Dy. S.P. from the Principal's house. Doctor gave him some medicine and had a cup of tea at his place. He left his house on the pretext of going to the Civil Hospital to which he had been transferred from Balrampur hospital; but instead he went to the house of Shamim at about 10.30 p.m. He rang call-bell. Shamim came out and opened the western door of the drawing room. It had three doors. The-central and the eastern doors were closed. To the east of the drawing room was a room in which Shamim used to sleep. There is another room to the west of the drawing room.

Gautam and Shamim talked about for 20 minutes in the drawing room. The former came out, went to the Scooter for going away. But Shamim called him back. As soon as he stepped back and reached inside the western door of the drawing room Shamim who had by then brought a DBBL gun, fired a shot at Gautam. It seems he crouched and the first shot missed. Shamim repeated the second shot intaneously and hit Gautam on the right side of his forehead. He fell down. The lower half of the body was inside the drawing room and the upper half was outside the door in the verandah. P.W. 15 Kalika Prasad the most important witness in this case and an immediate neighbour of Shamim was

lying on a cot outside his room. He has deposed to several facts to supply various links in the chain of the prosecution story. Apart from other facts stated by him in his deposition it is said that he and P.W. 18 Ram Krishna Tripathi saw Shamim immediately after the gun fire going with a gun in her right hand from the eastern side of the drawing room to the western room. They went near the dead body of Gautam, peeped into the drawing room but saw no one else there.

Sheikhu after the incident rushed to the house of appellant Amir Ahmad on a cycle. Amir Ahmad came to the house. He then went and lodged an information at Kaiserbagh Kotwali at 1.30 a.m. on the 12th July, 1968. In short his information to the police was that Sheikhu had told him that it was not known how Shamim brought out the gun and how it got fired but the shot hit Gautam who was lying bleeding in the verandah of the drawing room. In the meantime Kalika is said to have heard the extra-judicial confession made by Shamim before her mother sitting on a cot in the courtyard. Tripathi claimed to have heard a similar extra-judicial confession made by Shamim before her brother Amir Ahmad.

After receipt of the information at the Kotwali, the first to arrive at the scene of occurrence was Sub-Inspector Dildar Raza, P.W. 28. The various steps taken by him, the recovery of the licensed gun (standing in the name of Sikander Jahan), the fired cartridges and certain live cartridges are all mentioned in the judgments of the courts below. The case naturally required a very prompt, intensive and thorough investigation. Services of A Ballistic Expert, Handwriting Expert, Photographers belonging to the Criminal Investigation Department were requisitioned. Under orders of P.W. 17 Mohd. Sabir Khan later in the day the investigation was taken up by C.I.D. Inspector P. N. Singh from P.W. 28 Dildar Raza. After a few days the investigation was taken up by P.W. 31 K. P. Tiwari who eventually submitted the Charge-Sheet.

The defence of appellant Shamim was that she did not commit the murder. Eventually it was admitted on her behalf that she was in deep love with the Doctor. It was, however, denied that she had developed any jealousy or hatred or had any quarrel or difference with him. Like a drowning man catching at the straw, wild suggestions were thrown that there was a possibility of the murder of the Doctor having been committed by her cousin Iqbal Uddin Khan, P.W. 24, any of his family members or somebody else. Appellant Amir Ahmad in his defence asserted that on receiving the information from Sheikh he did not go to Shamim's residence, first went to Hazratganj Police Station and from there he went to Kaiserbagh Police Station. He denied to have lodged a written report Ext. Ka-12 or to have given deliberately any false information in order to screen his sister. The Trial Court believed the prosecution case and held it to have been established against both the accused and convicted them. The High Court affirming the findings of the Trial Court has maintained their conviction. As already stated it has reduced the quantum of sentence imposed on appellant Amir Ahmad. The High Court has scanned the prosecution evidence very carefully. It has left out of consideration the evidence of P.W. 18 Tripathi as a matter of abundant caution only on the ground of his having been examined late by the Investigating Agency on 16-12-1966. Topic-wise it has discussed the evidence and has met the criticism of the defence witness-wise also. On consideration of the entire evidence it has recorded the following conclusions of facts "1. that there was love affair between Km.

Shamim Rahmani and Dr. Hari Om Gautam.

2. that after being assured of the love professed by Dr. Gautam, Km. Shamim Rahmani behaved as a lovelorn girl.

3. that after seducing Km. Shamim, Dr. Gautam turned unfaithful to her and in spite of his written promises and the entreaties of Km. Shamim, he continued to be unfaithful.

4. that after Dr. Gautam had given written promises and had broken them, Km. Shamim slapped him openly and publicly in Kwality Restaurant.

5. that some 12-15 days before the murder Dr. Gautam had stopped visiting Km. Shamim so frequently as he had been doing earlier, and her entreaties had also failed to have any effect on Dr. Gautam.

6. that Dr. Gautam was threatened by Km.

Shamim on occasions for being unfaithful.

7. that continuously for two days before the murder, there had been heated talks between the two.

8. that two days before the murder Km.

Shamim had been informed by Ganesh that he had seen Dr. Gautam going on his scooter with another girl like her.

9. that this gave rise to the jealousy of Km. Shamim Rahmani to the extent that she made enquiries about the whereabouts of Dr. Gautam from his sister and called Dr. Gautam at her house and under the pretext of her illness.

10. that a few hours before the murder Km.

Shamim Rahmani had told Dr. Gautam that he should come in the evening to get her form filled no matter whether he came afterwards or not.

11. that Dr. Gautam was found murdered at the house of Km. Shamim Rahmani.

12. that the gun with which the murder had been committed was fired from inside the drawing room.

13. that after the murder no one except Mohammad Ahmad Rahmani alias Sheikhu was seen going out of the house.

14. that the gun with which the murder was committed belonged to Smt. Sikander Jahan and was recovered from the bed room of Km. Shamim Rahmani.

15. that Km. Shamim alone had a strong motive, to commit the murder of Dr. Gautam to the exclusion of any other member of the family or outsider.

16. that except Km. Shamim Rahmani there was no other person present in the drawing room shortly before and after the shooting.

17. that Km. Shamim Rahmani Was seen going in the drawing room from east to west with the gun in her right hand soon after the murder.

18. that Km. Shamim Rahmani made an extra-

judicial confession to her mother of her having shot at Dr. Gautam shortly after his murder."

It has also opined that even if the last two facts were left out of consideration the other sixteen were conclusive to irresistibly lead to the conclusion that it was Shamim and Shamim alone who was responsible for the murder of Gautam by gun fire. While endorsing the view of the High Court in this regard we find no justification for leaving the last two facts out of consideration for finding the guilt of appellant Shamim.

We now proceed to briefly refer to the various topic-wise and witness-wise discussion of the case by the High Court. Since we find ourselves in complete agreement with the judgment of the High Court, we do not propose, as it is not necessary to do so, to mention or discuss the various aspects of the case in any detail. The High Court has first pin-pointed its attention on the topography of the place of occurrence. Thereafter it has directed its attention to the evidence of Dr. Suri who had performed the autopsy on the dead body of Gautam. From the statement of Dildar Raza as well as from the copies of the various photographs exhibited in the case the position in which the dead body was found was fixed up. The various matters mentioned in the judgment of the High Court on the question "WHETHER THE SHOTS WERE FIRED FROM INSIDE THE DRAWING-ROOM OR FROM OUTSIDE" are so convincing that one could not but come to the conclusion that the shots were fired from inside the drawing room and not from outside. The various findings of bullet marks on the wall, the calendar, the door pane in the light of the evidence of the Ballistic Expert did not leave any scope for even a shadow of doubt that the Doctor was hit by a gun fired from inside the drawing room. The assailant at the time of firing was not and could not be visible to persons outside as the shots were fired from a place inside the drawing-room which was south east of the western door. And that is the reason that Kalika did not say that he saw Shamim firing the shots at Gautam. He merely deposed to the facts of the former proceeding to the western room immediately after the firing. It may also be added that the fact that the shots were fired from inside the drawing room was, neither disputed in the High Court nor before us. For the reasons stated by the High Court in its judgment, we unhesitatingly endorse its View that the shots were fired from the 20 Bore DBBL gun which was recovered from the eastern room and the licence of which was in the name of Sikander Jahan. Stress was laid before us that P.W. 14 Siva Ram Gupta, the Ballistic Expert had deposed with

reference to the two empty cartridges found at the spot that the shots could have been fired from the 20 Bore DBBL gun of Sikander Jahan ; the expert was not definite about it. We were recovered from the eastern room and keeping in view the fact that Gupta's evidence was not a direct evidence but an opinion evidence of the Expert and on appreciation of his evidence as a whole in the background of the other facts and circumstances there could not be any shadow of doubt that it was the DBBL gun of Sikander Jahan which was used in firing the shots at Gautam. Learned counsel for the appellant Shamim further submitted that Gupta had found some finger prints on the gun but the prosecution suppressed the Expert's report presumably because it did not bear the finger prints of Shamim. We think it has rightly been pointed out by the High Court that the gun in all probability was handled by other members of the family and the prosecution could not be, therefore, certain about the finger prints. Although we do not consider it necessary, as we have repeatedly said in this judgment, to repeat all that was argued before us, as it was a mere repetition of the argument before the High Court, out of deference to the pains-taking arguments of Mr. Yogeswar Prasad, just at times, we mention one or two matters. It was argued that in the recovery memo Ext. Ka-239 Raza did not mention that from the smell of the barrels it appeared that the gun had been recently fired as deposed to by him in court. He did say so with reference to the case diary. There was nothing shown either in the Trial Court or the High Court to contradict the statement. The recovery memo of the two fired cartridges is Ext. Ka-240. They were of "twenty bore coloured brown Eley Kynoch which are giving the odour of freshly used gun-powder". We may in passing refer to the recovery memo Ext. Ka-241 which showed recovery of five numbers of live cartridges of "twenty bore coloured brown of Eley Kynoch". On consideration of the entire, submissions made on behalf of the appellant, we are fully satisfied that the gun used in the occurrence was the gun the licence of which stood in the name of the mother of appellant Shamim.

The time and place of occurrence was not disputed. Nor was it disputed that "there was a love affair between Shamim and Dr. Gautam and that they had physical intimacy as well." One has simply to pity the lot of Shamim who surrendered to the Doctor her virginity and thereafter felt frustrated. It must have completely upset her mental balance. Relying on the evidence of P.W. 10 Gyani Mahendra Singh it has rightly been held by the High Court that the slapping incident in the Kwaliti Restaurant as deposed by him was true. There were several letters in the handwriting of Dr. Gautam Ext. Ka-21 is dated 17-1-1968 containing a, show of promise by him that thenceforward he would not witness any cinema show or go to any restaurant, coffee house or club. Before that is a letter Ext. Ka-20 dt. 27-7-1967 containing promise of Gautam that he would not talk about any girl. All these letters were addressed to Shamim and were recovered from the eastern room in which she used to reside.

The High Court has rightly believed the evidence of P.W. 19 Ganesh Prasad. All criticisms levelled against his testimony were fruitless and rightly so. Shamim was so much infatuated in her love with the Doctor that at one time she told her mother when there was a talk of Dr. Gautam's transfer from Lucknow that she would embrace Hinduism and go with him to his place of transfer. The mother consoled her that attempts would be made to get his transfer cancelled. it appears that the attempts did succeed and Dr. Gautam was eventually transferred from one hospital to the other in the City of Lucknow. Ganesh deposed about the information given by him to Shamim on 9-7-1968 that he had seen the Doctor going on his scooter with a girl like Shamim. This incident seems to have completely

unnerved the infatuated Shamim and put her out of gear.

The evidence of Dr. S. N. Roy, P.W. 20--another close neighbour of Shamim, Shushila Kumari, P.W. 21-a college friend of Shamim and Kumari Shashi Kanta Gautam, P.W. 23- sister of Dr. Gautam amply proves some of the facts found by the High Court in its ultimate conclusions. Unnecessary and pointless criticism was made of their evidence in the High Court with no result. The appraisal of the evidence of these witnesses by the 'High Court was so very right that it was only hoping against hope to get a different result in this Court.

On the point of the breaches which had been caused by the Doctor in his affairs with his beloved the prosecution could place on record a letter Ext. ka-29 deciphered with the help of an Expert. It does not bear any date. But it has been proved to be a, writing of Shamim to Dr. Gautam. It reads thus :

"Do not commit fraud with the girl otherwise in your life too such a time could come sometimes."

To resume the story of the last two days of the tragic love drama, it may be pointed out that Kalika saw Dr. Gautam going to the House Shamim on 10-7-1968. He heard their altercation. Again on 11-7-1968 Kalika saw the Doctor coming to Shamim's house at about 3.00 p.m. There was a heated altercation between the two but he could not catch the words as it was going on in the drawing room. After 15 minutes when both came out in the verandah then he could hear Shamim asking Gautam to get her work done' Gautam wanted to evade but Shamim sternly told him "that she had already heard such provocative words but further requested him that her form be filled up that night and after that he might come or not."

Before we refer to the criticism levelled against the testimony of the most important prosecution witness Kalika, we may point out that Iqbal Uddin Khan was examined as a prosecution witness. He was in the house of Shamim for a few days prior to the occurrence but left the house at about 3.00 p.m. for going to Barielly by Punjab Mail. His evidence completely negatives the suggestion that he could have been responsible for the murder of the Doctor. We may also dispose of the point which was sought to be vehemently pressed before us that the police investigation in this case was not fair and proper. It was argued that P.W. 17 Mohammad Sabir Khan being a, friend of the Doctor took an unusual interest in the investigation and he was responsible for asking P. N. Singh to take up the investigation from Dildar Raza. It was further submitted that Crime number was given to the case after 4.00 p.m. on the 12th July although investigation started earlier. Then it was argued that Ext. ka-230 the typed letter asking P. N. Singh to take up the investigation bore the crime number although P. N. Singh took up the investigation at about 3.00 p.m. on the 12th July. It was, therefore, submitted that the letter was a fabricated and anti-timed document. The learned Additional Sessions Judge and the learned Judges of the High Court have given a complete answer to all the criticism. The last point was repelled with reference to the handwritten letter Ext. Ka-254 which bore the endorsement of Dildar Raza also. We have no doubt that the investigation was conducted promptly and faithfully and could not be subjected to any due criticism. The High Court has excluded even the remote possibility of the murder having been committed by Sikander Jahan, Naseem, Sheikbu or Sughara, their maid servant. In our opinion, hinting upon the possibility of the

murder having been committed by any of them was an attempt in desperation to catch in air something to save Shamim.

Then comes the evidence of Kalika. As already stated his testimony is in support of many facts which make the cover of circumstances full-proof against Shamim. Having considered his evidence in the light of the criticism, we see no justification to reject it in disagreement with the two courts below. Apart from being a witness to the love affairs of the Doctor and Shamim, the visits of the former to the latter, he was also a witness to the fact that Gautam was not visiting Shamim's house so frequently as he had been doing earlier shortly before the occurrence. He was a direct witness to his visits to Shamim's house on the 10th and twice on the 11th. His evidence that he had seen Shamim going in the drawing room from east to west with the gun in her hand immediately after the shooting was quite trustworthy. Even though the eastern plank of the western room of the drawing room was shut, through the remaining open space of the western door Kalika could very well see Shamim passing in the drawing room with a gun in her hand. There was sufficient light. His evidence as to the extra-judicial confession made by Shamim to her mother seems to be quite natural and convincing. On query by the mother the reply given by Shamim was that she had done nothing wrong in shooting Dr. Gautam when he went back from his promises and was proving unfaithful. From the view point of common ethics or morality one may say that Shamim committed no sin in shooting dead a man like Gautam, although she was contributory in the act of Gautam's lust for her. But in the eye of law, she surely committed the crime of murder punishable under section 302 of the Penal Code. Even if we wished, we could not reduce the sentence of life imprisonment imposed on her as that is the minimum sentence provided under section 302 of the Penal Code. Her mercy appeal for remission of any part of her sentence lies elsewhere.

The criticism levelled against the prosecution witness Kalika are :

(1) That he was examined late by the police in the evening of the 12th July, 1968.

(2) That the parchas containing his statement were sent to the office of the Superintendent of Police on the 15th July. (3) That there are material contradictions in his evidence. (4) That there is an interpolation in the case diary where Kalika's statement has been recorded.

That he was inimical to Shamim's family. (6) That he deposed in court as admitted by him from his fits of imagination and not on facts from his ocular observations.

(7) That he could not see Shamim passing in the drawing room with a gun in her hand.

(8) That his evidence as to the alleged extra-judicial con-

fession made by Shamim before her mother is untrustworthy. We find no substance in any of the criticisms made on behalf of appellant Shamim. Some of them have already been alluded to. On the facts explained by him, his examination by the police was not late. High Court has found a plausible

reason for the receipt of the parchas in the S.P.'s Office on the 15th. There is no such interpolation in his statement in the case diary which could cause any doubt in respect of it. He was not inimical to Shamim's family. His statement in the deposition at times that whatever came in his mind he had stated means in the context that whatever he could recollect he had stated. It is just a figment of imagination to suggest that his statements were the product-, of his imagination. We have already reiterated the view of the High Court that he could very well see Shamim going in the drawing room with a gun in her hand and that his evidence as respects her extra-judicial confession is trustworthy. Although the learned Additional Sessions Judge was not unjustified in relying upon the evidence of P.W. 18 Tripathi, the High Court also seems to be justifiably cautious when it thought it proper to exclude his evidence from consideration. There was some justification for it because he was examined late by the police. The exclusion of his evidence from consideration, however, as we shall presently show goes a long way to help appellant Amir Ahmad. For the reasons stated above we see no substance in the appeal filed by appellant Shamim Rahmani and dismiss it. Coming to the appeal of appellant Amir Ahmad, we would first like to quote the translation of the written report given by him at the police station, from the judgment of the Trial Court. It reads as follows :

"Sir, I beg to state that I reside along with my family in 24/1, New Berry Road. My mother along with two sisters reside in my younger brother's house No. 23, Kandhari ' Lane. Today at night about 11.30 my younger brother Mohammad Ahmad Rahmani came to my house and started knocking the main gate with great force on which I opened the door. Mohammad Ahmad told me that a strange thing has happened in the house. On my asking, he told that he did not know how his ;sister Shamim took his gun outside and somehow a fire was shot. The bullet hit Dr. Gautam and he has fallen and is bleeding. After writing my report the necessary action may be taken. Applicant Amir Rahmani s/o Azizur Rahman Khan resident of 24/1 New Bery Road, Lucknow 12th July, 1968."

We do not doubt in the least that this was the written report given by this appellant at Kaiserbagh Kotwali. The attempt made on this behalf If to show that he had not gone to the place of occurrence before going to the Thana or that he had not given this written report at 1.30 a.m. on the 12th of July has rightly failed in high courts below. But the question for consideration is whether without the aid of the evidence of P. W. Tripathi it could be held that the requirements of section 201 of the Penal Code have been fulfilled against him. The evidence of Tripathi was as respects the extra official confession said to have been made by Shamim before this appelllant. If that could be taken into consideration then one could that he knew that the offence of murder had been committed by his sister. On that basis it could be held that the written report as given by him was with the intention of screening the offender from final punishment and he knew the information to be false. But once that goes out then we are left with what he learnt from vikhu and what was told to him by Kalika. We believe the testimony of Kalika to the effect that Amir Ahmad had gone to the of occurrence on a motor-cycle or a scooter and he had told him everything. But then, what follows? Kalika had not stated that he had seen Shamim firing at the Doctor. The facts narrated by him must be, more or less, in brief those as told by him in court. On these facts Amir Ahmad could neither know nor could have reason to believe that Shamim had committed the murder of the Doctor. More facts were yet to be known. He did nothing wrong in rushing to the Police Station and giving the barest information

in writing. No other part of the statement is said to be false except the following "Mohammad Ahmad told me that a strange thing has happened in the house. On my asking, he told that he did not know how his sister Shamim took his gun outside and somehow a fire was shot. The bullet hit Dr. Gautam and he has fallen and is bleeding."

Prosecution could not unfold that Mohammad Ahmad alias Sheikhu had told anything further to Amir Ahmad. The fact that his sister Shamim took out the gun was true. That shot was fired was also true. It was a fact that the bullet hit the Doctor. That he had fallen and was bleeding was not untrue, Amir Ahmad may not be sure whether the Doctor was dead or alive. It was not obligatory or necessary for him to probe the matter any further at the spot before rushing to the police station. In our judgment, therefore, after exclusion of the evidence of P. W. Tripathi from consideration all the ingredients necessary to be established for bringing home the charge under section 201 of the Penal Code to appellant Amir Ahmad were not proved beyond reasonable doubt. He may have known or may have reason to believe that an offence of murder had been committed by his sister Shamim. But the other possibility that he may not have known or may not have reason to believe, he may have only suspected that the offence of murder had been committed by Shamim, cannot be ruled out. That being so, we think the benefit of doubt must go to appellant Amir Ahmad. We accordingly allow his appeal, set aside his conviction and sentence under section 201 of the Penal Code and acquit him of that charge.

Cr. As. Nos. 121-122/73 dismissed.

Cr. A. No. 123/73 allowed.

P. B. R. 10 sC/75-22