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Kabiraj Tudu Vs State of Assam

Court: Gauhati High Court

Date of Decision: Aug. 31, 1992

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 165, 172(2), 173, 174
Evidence Act, 1872 â€" Section 118, 165
Oaths Act, 1969 â€" Section 4(1)
Penal Code, 1860 (IPC) â€" Section 299, 300, 302, 304

Citation: (1994) CriLJ 432

Hon'ble Judges: U.L. Bhat, C.J; D.N. Baruah, J

Bench: Division Bench

Advocate: A. Bhattacharjee, Amicus Curiae, for the Appellant; G. Sarma, Public Prosecutor, for the Respondent

Judgement

U.L. Bhat, C.J.
This is a jail appeal filed by the accused in sessions case No. 94(N)/86 on the file of the Sessions Court, Nalbari, who has

been convicted u/s 302, I.P.C. and sentenced to undergo imprisonment for life and pay of fine of Rs. 1000/- and in default to undergo rigorous

imprisonment for six months.

2. Prosecution case is that at about 8.00 a.m. on 29-6-1985 appellant armed with a bow and arrow chased Lakhi Mardi, wife of P. W. 1 and

when she reached the paddy field of P. W. 2, he shot an arrow which struck her in the back region of her head and she fell down injured. The

occurrence was witnessed by P.W. 2 who was working in the field and P.W. 3, the 8 year son of Lakhi Mardi who was coming behind his

mother. P.W. 2 ran away out of fear. P.W. 3 ran away and informed his father, P.W. 1, about the occurrence. P.W. 1 came to the scene and with

the help of others took his wife to his house where she died. He went to Kumarikata Police Out Post and gave Ext. 1 information to the S.I. of

Police in charge, P.W. 4. P.W. 1 sent Ext. 1 to Tamulpur P.S. having jurisdiction over the area, for registration of the case. He was directed to

conduct investigation. He proceeded to the village, held inquest over the body of deceased and prepared inquest report, Ext. 3. He arrested the

appellant the next day and questioned him. He went to the scene and noticed bloodstains and seized Ext. 1 arrow head lying there. Post-mortem

was conducted by P.W. 5, Medical Officer. After completing investigation, P.W. 4 laid the final report against the appellant u/s 173, Cr. P. C.

3. Appellant pleaded not guilty before the Sessions Court. Prosecution examined five witnesses and marked the relevant documents and material

exhibits. Appellant, when questioned by the trial Court, merely denied the truth of the prosecution evidence. The trial Court held that the charge

against the appellant u/s 302, IPC has been established beyond reasonable doubt and convicted and sentenced him as stated above.

4. Since the appellant had no Counsel, Smt. A, Bhattacharjee, Advocate was appointed State Brief to argue on his behalf. Learned Counsel has

contended that the medical evidence is inconsistent with the prosecution case, that all the injuries found on the dead body have not been explained

by the prosecution, that the injuries could not have been caused by an arrow, that the evidence of P.W. 2 is unworthy of belief in view of the major

contradiction with his earlier version to the Police. We have been taken through the documents and evidence in the case.

5. Post-mortem certificate and the evidence of the doctor will show that there were as many as 10 injuries on the dead body. Of them, injuries 1, 3

and 4 are bone deep injuries on the left ring finger, left middle finger and left forearm. Injury 2 is a fracture of the phalanxial bone below injury No.

1. Injury 5 is fracture of the ulna below the injury No. 4. Injury No. 6 is a minor abrasion on the left deltoid region. Injury No. 7 is a lacerated

wound on the occipital region of the scalp, 2.5 cm. x .1 cm. x bone deep. More serious injuries are injuries 8 to 10, which are described as

follows:

8. Lacerated wound on the left parietal region of the scalp 1.5 cm. above the left ear, 3.5 cm. x .5 cm. x bone deep.

9. Fracture of the left parietal bone below injury No. 8.

10. Subdural haematoma over the left parietal region of the brain. Ante-mortem blood clot seen adherent to the wounds described above.

P.W. 5 deposed that death was on account of head injuries along with other injuries sustained leading to shock, haemorrhage and coma. The

opinion expressed as such cannot be accepted since we do not think the injuries, namely, injuries 1, 3, 4 and 6 could have contributed to either

shock, haemorrhage or coma; but there can be no doubt that these injuries were sustained in the course of the occurrence. Death must have been

caused by injuries 8 and 9 together with the internal injury No. 10.

6. P.Ws. 2 and 3 are the only eye-witnesses to the occurrence. They gave a uniform version about the occurrence, namely, that the deceased was

running towards the paddy field of P.W. 2 followed by the appellant armed with arrow and bow and he shot an arrow which struck her on the

back region of her head and she fell down on the ground. A contradiction has been elicited with regard to the evidence of P. W. 2. He denied that

he told the Police that he had taken the injured into his arms when she began running towards her house. The contradiction has been proved by the

Police Officer who recorded the statement, namely, P.W. 4. We do not think this contradiction is of such nature and quality as to cause doubt

about the truthfulness of P.W. 2. Though some vague suggestion has been put to him, there is nothing concrete to indicate that he bore any animus

against the appellant. The evidence of P.W. 2, who is a natural and independent witness appears to be trustworthy.

7. P.W. 3 is the son of the deceased and a child witness. Learned trial Judge administered oath to him. The deposition does not show that any

preliminary questions had been put to the witness to enable the Court to satisfy itself either about his competency to give evidence or about his

competency to take oath.

8. Section 118, Indian Evidence Act, 1872 states that all persons shall be competent to testify unless the Court considers that they are prevented

from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease,

whether of body or mind, or any other cause of the same kind. Sub-section (1) of Section 4 of the Oaths Act, 1969 mandates that oath or

affirmation shall be made by the persons indicated in Clauses (a), (b) and (c), that is, all witnesses, interpreters and jurors. The proviso to Sub-

section (1) of Section 4 states, inter alia, that where the child is under 12 years of age, and the Court is of the opinion that, though the witnesses

understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and

the provisions of Section 5 shall not apply to such witness. However, in any such case the absence of an oath or affirmation shall not render

inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.

9. There is no provision in the Indian Evidence Act specifically dealing with child witness. Section 118 of that Act is understood as taking in a child

witness since reference is made to a person who by tender years is unable to understand the questions put to him or from giving rational answers to

those questions. Section 118 of the Evidence Act and the proviso to Section 4(1) of the Oaths Act deal with two different aspects: the former

deals with competency to testify and the latter deals with competency to take an oath. Competency to testify depends on the witness''s ability to

understand questions put to him and to give rational answers to those questions. Competency under the Oaths Act depends on the witness''s

comprehension of the duty of speaking the truth and the nature pf an oath or affirmation. Once a witness is found to be a competent witness, even

if he is not competent to take an oath or if there is an omission to take an oath that will not invalidate the proceedings or render inadmissible the

evidence. The rule generally is in favour of admission of evidence though the weight to be attached to it will naturally be a matter for consideration

by the Court. There is always competency unless the Court considers otherwise. If a witness is not competent he will not be examined in Court. In

the case of a child, it depends on the capacity of the child, his appreciation of the difference between truth and falsehood as well as his duty to tell

the former. The decision of this question rests with the trial Judge, who sees the proposed witness, notices his manner, his apparent possession, or

lack of intelligence. The trial Judge may resort to any examination which will tend to disclose the capacity and intelligence and in the case of an

oath, his understanding of the obligation of an oath. See Rameshwar Vs. The State of Rajasthan, George L. Wheeler v. United States 159 US 523

Krishna Kahar Vs. Emperor, Ram Hazoor Pandey Vs. State, Basu v. State of Kerala (1960) ILR 256 and Ponnumani v. State of Kerala 1987

(2) KLT 1042 . Oath or affirmation shall be made by all witnesses, the only exception being the case of a child under 12 years of age where the

Court is of the opinion that though he understands the duty of speaking the truth he does not understand oath or affirmation. If the Court is so

satisfied, oath will not be administered to the witness. The evidence will nevertheless be admissible.

10. Whenever a witness appears before Court, the Court will proceed on the basis that he is competent to testify. When a witness is a person of

tender years or extreme old age or a person who suffers from disease or other abnormality of the body or mind, the Court is alerted to test his

competency. Similarly where a witness is a child the Court is alerted on the need to decide whether oath can be administered. Ordinarily this

satisfaction is to be arrived at by preliminary examination of the witness by the Court. This does not mean that in the absence of preliminary

examination the evidence becomes inadmissible since the general rule is in favour of the competency and satisfaction, if necessary, can be arrived in

the course of the evidence. However, trial Courts would do well to conduct preliminary examination to satisfy themselves in regard to the

competency u/s 118 of the Evidence Act as well as under the proviso to Section 4(1) of the Oaths Act. It is highly desirable to bring on record the

questions and answers put to the witness and to make a record of the satisfaction of the Court. Even in the absence of specific record of

preliminary questions or the satisfaction the appellate Court could examine the nature and tenor of the evidence recorded, the manner in which the

witness faced in cross-examination and satisfy itself about the competency under both the provisions.

11. Deposition of P.W. 3 does not contain record of any preliminary questions or answers regarding the competency of Section 118 of the

Evidence Act or proviso to Section 4(1) of the Oaths Act. This is indeed unfortunate. Trial Judges would do well to bear in mind that it is not

sufficient that they are satisfied about these matters and the appellate Court also may have to examine these aspects and the appellate Court would

be under disadvantage in the absence of proper record being maintained by them. We have carefully gone through the evidence of P.W. 3, the

nature and tenor of answers given by him and the manner in which he faced cross-examination. We are satisfied that he is a witness competent to

testify and understands the need to speak the truth and the nature of oath administered to him.

12. A child witness may or may not be fully matured. By virtue of his tender years he is susceptible to tutoring by persons interested in the case or

by near relations. A child witness is susceptible to influence from such persons. It is therefore necessary that Court should examine the evidence of

child witness with care or caution bearing in mind the susceptibility and possible immaturity of the child. In Rameshwar Vs. The State of Rajasthan,

the Court was considering the evidence of a child who was subjected to rape and the question whether the evidence of the rape on the child

require corroboration. Vivian Bose, J. speaking for the Court observed at page 550 (of Cri LJ):

In my opinion, the true rule is that in every case of this type the rule about the advisability of corroboration should be present to the mind of the

Judge. The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction

but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present

to the mind of the Judge,.... before a conviction without corroboration can be sustained. The tender years of the child, coupled with other

circumstances appearing in the case such, for example, as its demeanour, unlikelihood of tutoring and so forth, may render corroboration

unnecessary but that is a question of fact in every case. The only rule of law is that this rule of prudence must be present to the mind of the Judge or

the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be

corroboration before a conviction can be allowed to stand.

The above observations were made in a case where the prosecutrix is the child and not in a case of a child who merely happened to witness

commission of the crime. As we have indicated earlier, in such a case prudence requires that the Court should be conscious of the susceptibility of

the witness for tutoring and being subjected to extraneous influence. Having regard to the status of the witness, the nature of the evidence given by

the witness, the manner in which he gave evidence and other circumstances obtaining in the case, it is open to the Court to regard the evidence as

either trustworthy in itself or as requiring corroboration.

13. We have carefully gone through the evidence of P.W. 3. We find the witness to be a person of maturity and understanding as is normal in a

rural setting, as observed by the Supreme Court in Tehal Singh v. ""State of Punjab AIR 1979 SC 1347 : (1979 Cri LJ 1031). He has given

evidence in a cogent and consistent manner. No contradiction with reference to his earlier statement to the police has been elicited. His evidence

appears to be natural and probable and is consistent with the evidence of P.W. 2. There is nothing to indicate that his evidence is the result of

tutoring on the part of any one. We have therefore no hesitation in accepting his evidence as well as that of P.W. 2.

14. It is also argued that prosecution has not proved any motive for the appellant to attack the deceased. If the eye-witnesses" testimony and other

evidence is of an un-impeachable variety and inspires confidence in the Court, the fact that motiveis not proved may not be of any significance.

Nevertheless, we find some indication of motive is the evidence of P.W. 3 who deposed that when his mother was collecting green leaves, the

appellant chased her. It is quite possible that there was a dispute between the deceased and P.W. 1 on the one hand and the appellant on the other

regarding the green leaves and the piece of land from where green leaves were being collected. In these circumstances we are unable to find any

infirmity in the prosecution case.

15. According to the learned Counsel for the appellant, the medical evidence completely destroys the prosecution case. P.Ws. 2 and 3 spoke

about one shot with the arrow. Obviously, one shot with the arrow cannot by itself lead to 10 injuries. Of the 10 injuries spoken to by P.W. 5,

injury Nos. 2, 5, 9 and 10 are internal injuries. There are only six external injuries. Of them, injury Nos: 1, 3, 4 and 6 are injuries on the left side of

the body. The consistent prosecution evidence is that after being injured by the arrow, the injured fell down. Since all the injuries are on one side of

the body, they could have been caused in the course of one fall. Injury No. 7 is a simple injury on the scalp. We are of the opinion that this injury

also could have been caused by the fall. That leaves us with the injury on the left parietal region. This injury had been noticed during inquest. From

the description, nature and dimension of the injury, the necessary inference is that the injury could have been caused by an arrow shot from a bow.

Medical evidence is not against the prosecution case; medical evidence is not adequate. From our experience of injuries and weapons, we are

satisfied that the injuries are consistent with the prosecution version of the occurrence as spoken to by P.Ws. 2 and 3.

16. The evidence of the doctor, P. W. 5, is to say the least, far from satisfactory. He was not asked whether any of the injuries are simple or

grievous in nature, or likely to cause death or sufficient in the ordinary course of nature to cause death or necessarily fatal. The main responsibility

for this must fall on the prosecutor conducting the case in the Sessions Court. It is the duty of the prosecution to bring out from the medical witness

details about the injuries, the cause of death, the nature and gravity of the injuries, such as, simple injury, grievous injury, injury likely to cause

death, injury sufficient in the ordinary course of nature to cause death, or injury which is necessarily fatal. The prosecutor has also the duty to show

the weapon, if it is available, and where it is not available, to furnish the medical witness an adequate description of the weapon and ask him

whether the particular injury or injuries could have been caused by using such weapon. The prosecutor in this case has signally failed in the

discharge of his duty. Even where the prosecution fails to put these most relevant questions, the Sessions Court is not to sit as a silent spectator.

Ultimately, the Court has to decide the matters in controversy in the case and has to write the judgment. The Court has to be vigilant when

witnesses, particularly expert witnesses, are in Court and where the prosecutor fails to put relevant questions the answers to which will help the

Court to come to a correct conclusion in regard to the matters relevant to the enquiry, the Court has a duty to see that the particulars are elicited.

Where the prosecutor, either on account of ignorance or otherwise fails to put relevant questions to an expert witness, the trial Judge has the duty

and right to put such questions to the witness, not with a view to help one side or the other, but merely to help the Court in arriving at a correct

conclusion in regard to matters in dispute on the medical aspects of the case. The Sessions Judge has also the duty to ensure that the doctor, who

conducted post-mortem examination is shown the weapon if it is available, or where it is not available, the description of the weapon is put to him

and is asked whether such weapon could or could not cause any of the injuries. Where the prosecutor fails to discharge his duty adequately the

trial Judge has also the duty to elicit from the medical witness the nature and gravity of the injuries sustained, for without such data it may be often

difficult for the Court to come to a conclusion.

17. We are fortified in our view by certain decisions of the Supreme Court. In Kartarey and Others Vs. The State of Uttar Pradesh, the Supreme

Court observed at page 18 (of Cri LJ):

We take this opportunity of emphasising the importance of eliciting the opinion of the medical witness, who had examined the injuries of the victim,

more specifically on this point, for the proper administration of justice, particularly in a case where injuries found are forensically of the same

species, e.g., stab wounds, and the problem before the Court is whether all or any of those injuries could be caused with one or more than one

weapon. It is the duty of the prosecution, and no less of the Court, to see that the alleged weapon of the offence, if available, is shown to the

medical witness and his opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so may

sometimes, cause aberration in the course or justice.

The above observations have been quoted with approval in a later decision of the Supreme Court in Ishwar Singh Vs. State of U.P.,

18. The Supreme Court in Ram Chander Vs. State of Haryana, quoted with approval the following observations of Lord Justice Denning in Jones

v. National Coal Board (1957) 2 All ER 155:

The Judge''s part in all this is to hearken to the evidence, only himself asking questions to witnesses when it is necessary to clear up any point that

has been overlooked or left obscure; to see that the advocate behave themselves seemly and keep to the rules laid down by law; to exclude

irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess

their worth; and at the end to make up his mind where the truth lies.

Relying on these observations the Supreme Court in Ram Chander''s case stated (at page 609 of Cri LJ):

The adversary system of trial being what it is there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an

umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from

combative and competitive elements entering the trial procedure. If a Criminal Court is to be an effective instrument in dispensing justice, the

presiding judge must cease to be a spectator and a mere recording mechine. He must become a participant in the trial by evincing intelligent active

interest by putting questions to witnesses in order to ascertain the truth.

After referring to Sections 165 and 172(2) of the Criminal Procedure Code the Supreme Court observed (at page 610 of Cri LJ):

With such wide powers the Court must actively participate in the trial to elicit the truth and to protect the weak and the innocent. It must, of course,

not assume the role of a prosecutor in putting questions.

The Court proceeded to observe further (at page 610 of Cri LJ):

We may go further than Lord Denning and say that it is the duty of a judge to discover the truth and for that purpose he may ask any question, in

any form, at any time, of any witness or of the parties, about any fact, relevant or irrelevant (Section 165, Evidence Act). But this he must do,

without unduly trespassing upon the functions of the public prosecutor and the defence counsel, without any hint of partisanship and without

appearing to frighten or bully witnesses. He must take the prosecution and the defence with him. The court, the prosecution and the defence must

work as a team whose goal is justice, a team whose captain is the judge.

19. We have given expression to what is indicated above since in cases like this medical evidence has a considerable bearing on the determination

of mens rea of the accused being tried for an offence u/s 302, IPC culpable homicide is defined by Section 299, IPC while Section 300, IPC deals

with culpable homicide amounting to murder. Section 299 represents the genus while Section 300 represents the species. Section 299 covers a

broader area than Section 300. The first clauses of Section 299 and 300 are identical. Secondly, thirdly and fourthly of Section 300, IPC

represent states of affairs graver than those contemplated in second and third clauses of Section 299, IPC. We may refer to thirdly of Section 300,

IPC, which reads:

If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course

of nature to cause death.

The nature of the injury is very vital in deciding whether the act falls within thirdly or not of Section 300, IPC. Similar is the case with regard to

second and third clauses of Section 299, IPC, which reads:

...with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death.

The nature, gravity and seriousness of the injury is most relevant in considering the applicability of these clauses of Section 299, IPC.

20. We have carefully considered the oral evidence and circumstances available in the case. The information to the police was given without any

delay. It is not brought out that the important witnesses were not questioned early enough. We have found the evidence of eye witnesses P.Ws. 2

and 3 trustworthy. The medical evidence is consistent with the version of these witnesses. There is absolutely nothing to indicate that either the

informant or the eye witnesses entertained such deep seated grudge as to persuade them to implicate the appellant in a false case. The prosecution

version is natural and probable. In these circumstances we have no hesitation to agree with the conclusion of the learned trial court that the

prosecution version has been proved beyond reasonable doubt.

21. The prosecutor did not care to elicit from the doctor whether the injuries are of such a nature as is merely likely to cause death or sufficient in

the ordinary course of nature to cause death and other particulars. The learned Sessions Judge also did not attempt to collect the necessary data

from the witness. This however does not mean that the case should end in acquittal. Evidence of the expert in these matters is only opinion

evidence which the court has to analyse and appreciate before deciding to accept or reject it. The court with its own experience about cases of

homicide, nature of injuries and its own study on the subject has to arrive at its own conclusion with regard to these matters. Injury No. 10 is

subdural haematoma over the left parietal region of the brain. Ante-mortem blood clots were seen adherent to the wound. This corresponds to

external injury No. 8, namely, lacerated wound on the left parietal, region of the scalp. The nature and extent of subdural haematoma is not

indicated in the certificate or in the evidence of the doctor. Going by evidence of P.Ws. 2 and 3, death was not instantaneous. Death took place

some time after injured was taken to her own house. Evidence is lacking as to the exact time interval. In the circumstances it is not possible to hold

that the injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. We say so not only because of the nature of

the medical evidence, but also the circumstances under which the injury was inflicted. The injury was inflicted with an arrow released from a bow at

a distance of about 80 ft. and at that time both the assailant and the victim were running. The circumstances are not sufficient to enable the court to

hold that the appellant was aiming at any vital part of the body of the deceased, though there is no doubt he was aiming to injure her. It is therefore

not possible to say that he inflicted the injury with the intention of causing such bodily injury as is likely to cause death. However, the appellant who

is familiar with the weapon must necessarily have known that by shooting an arrow from a bow at such a distance there is every likelihood of the

arrow piercing a vital part of the body and likelihood of causing death. In this view, we hold that the appellant''s act attracts the last clause of

Section 299, IPC, punishable under Part II of Section 304, IPC. It is unfortunate that the learned Sessions Judge did not pay attention to any one

of these aspects.

22. There are other reasons why in our opinion the judgment of the learned Sessions Judge is not satisfactory. The judgment does not refer to any

of the injuries, not even the vital injuries which have a bearing on the death of the individual. It does not refer to the aspect whether the lacerated

injury on the left parietal region of the scalp could have been caused with an arrow shot from a bow. It does not refer to the nature and gravity of

the injuries and their impact on the mens rea of the appellant. It does not refer to the probabilities of the case, the aspect whether the eye witnesses

could not believed or not. The truth of the prosecution case appears to have been decided for the following reason, namely,

No sane person will kill his own wife just to implicate falsely his enemy with murder.

This has reference to the first Information submitted by P.W. 1 on the death of his wife. The learned Sessions Judge ought to have remembered

that P.W. 1 is not an eye witness and he gave information to the police on the basis of the version which he received from his son or others. What

the learned Sessions Judge ought to have considered was trustworthiness of P.Ws. 2 and 3, which he did not care to consider. The judgment does

not contain an appendix at the end to indicate who are the witnesses examined and what are the exhibits marked.

23. We find that the inquest report has been prepared on a piece of plain paper. Apparently no pro forma is prescribed in the State of Assam for

preparation of inquest report, as is done in most of the other States in the country. We find such pro forma referred to by the Supreme Court in

Pedda Narayana and Others Vs. State of Andhra Pradesh, Section 174 of the Criminal Procedure Code deals with inquest. Sub-sec. (1) requires

the officer in-charge of police station or other empowered police officer to proceed to the place where the dead body is, and there, in the presence

of two or more respectable inhabitants of the neighbourhood, to make an investigation, and draw up a report of the apparent cause of death,

describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what

weapon or instrument (if any), such marks appear to have been inflicted. As explained by the Supreme Court in Pedda Narayana and Others Vs.

State of Andhra Pradesh, the object of holding an inquest is to find whether a person died a natural death or a homicidal death or death due to

suicide and what is the apparent cause of death. The Supreme Court has observed in Mrs. Shakila Khader and Others Vs. Nausheer Cama and

Others, that (at page 1108 of Cri LJ):

In an inquest all the witnesses need not be examined as an inquest u/s 174, Cr. P.C. is concerned with establishing the cause of the death and only

evidence necessary to establish it need be brought out.

In the light of what we have indicated above, it would be useful if the authority concerned prescribes a pro forma for preparation of inquest report

and gives necessary guidelines in regard to the various steps to be taken during the inquest, including questioning eye-witnesses or other important

witnesses available for questioning.

24. In the result, we set aside the conviction and sentence entered against the appellant u/s 302, IPC and convict him u/s 304, Part II, IPC and

impose a sentence of rigorous imprisonment for a period of six years. He has already undergone the imprisonment for this period. He will,

therefore, be set at liberty unless his continued detention is required in connection with any other case.

25. The appeal is allowed to this extent.

26. Copies of the judgment will be forwarded to the Secretaries in Home and Law Departments of all the State Governments under the jurisdiction

of this Court and Directors General of Police for taking appropriate action on the observations in this judgments.