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Kamal Kishore Singh @ Pandit Vs The State (Govt. of NCT) Delhi

Criminal Appeal 791 of 2010

Court: Delhi High Court

Date of Decision: July 29, 2013

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 154, 161, 313, 428#Evidence Act, 1872 â€" Section 145, 157#Penal Code, 1860 (IPC) â€" Section 120B(1), 300, 302, 304, 323

Citation: (2013) 8 AD 288 : (2013) 3 JCC 2030

Hon'ble Judges: Kailash Gambhir, J; Indermeet Kaur, J

Bench: Division Bench

Advocate: A.K. Trivedi in Crl.A. 791/2010, Mr. R.K. Anand in Crl.A. 1014/2010 and Mr. S.B. Dandapani in Crl.A. 1239/2010, for the Appellant; Sunil Sharma, Assistant Public Prosecutor, for the Respondent

Final Decision: Disposed Off

Judgement

Indermeet Kaur, J.
The appellants are aggrieved by the impugned judgment dated 15.4.2010 vide which they had been convicted for the

offence u/s 302 read with Section 120B(1) of the IPC. Accused Munni Lal and Tilisra had been further convicted u/s 452 read with Section 34

IPC. Vide order of sentence dated 15.4.2010 all the three convicts had been sentenced to undergo imprisonment for life and to pay a fine of Rs.

2000/- each in default of payment of fine to undergo RI for two months for the offence u/s 302 read with Section 120B(1) of the IPC. Accused

Munni Lal and Tilisra were further sentenced to undergo RI for two years and fine of Rs. 1000/- each in default of payment of fine RI for one

month for the offence u/s 452 read with Section 34 IPC. All the sentences were to run concurrently. Benefit of Section 428 of the Code of

Criminal Procedure (hereinafter referred to as the Code) had been granted to the appellants. The version of the prosecution was unfolded on the

statement of Sanju Devi (who later on died) and the initial offence registered under Sections 323 /324 /452 /34 IPC was converted to an offence

u/s 302 /120B(1) /452 /34 IPC. Her statement was recorded by SI Jitender (PW-14) in the hospital after he had obtained a fitness on his

application (Ex. PW-14/A). The statement (Ex. PW-14/A1) is to the effect that Sanju Devi was living in her jhuggi at Nehru Nagar, Anand

Parbhat; at about 9.30 PM on 22.7.2006 while she was preparing a meal in her jhuggi her neighbour accused Munni Lal and his wife accused

Tilisra entered her jhuggi and told her that there was no one to save her; she had been saved earlier; they asked her to vacate the jhuggi; the victim

refused to vacate it; thereupon Tilisra caught hold of the hair of the victim and started beating her with her legs and fists; her husband Munni Lal

who had a danda in his hand started beating her with the danda. The victim received injuries. Thereupon Munni Lal took out a sharp edged

weapon from his right pant pocket and attacked the victim on her arms; her neighbour Vijay Laxmi (PW-5) rushed in. The accused persons ran

away.

2. Pursuant to this statement the initial FIR had been registered under the aforesaid provision of law but after the victim had succumbed to her

injuries on 24.7.2006 (two days after the incident) the offence was converted to the offence of murder. The name of the third accused Kamal

Kishore had surfaced in the disclosure statement of the other two accused, pursuant to which the conspiracy hatched by all three of them had

emanated.

3. Further version of the prosecution is that Kumari Savitri (PW-8), daughter of the deceased (aged about 12 years) had seen the incident; she

was in the jhuggi at that time. She deposed that accused Munni Lal was armed with a danda and his wife Tilisra both entered their jhuggi; Tilisra

caught hold of her mother whereas Munni Lal started beating her mother with the danda. Accused Kamal Kishore was also present and he also

started beating her mother with fists and kicks; they asked her mother to vacate the jhuggi. PW-8 became alarmed and rushed to the house of her

aunt (mausi) who was living nearby and narrated the incident to her.

4. The aunt of PW-8, Manju Devi has been examined as PW-4; she has corroborated the version of PW-8. On hearing this incident from her

niece she rushed to her sister''s jhuggi where she found Sanju Devi lying on the floor having injuries on her left arm and knife injury on her right

forearm and she was crying with pain. Sanju Devi disclosed to PW-4 that she had been injured by Munni Lal and Tilisra who had after attacking

her run away. She further disclosed that this incident had occurred at the behest of Kamal @ Baba who wanted the jhuggi.

5. PCR was informed at 10.00 P.M. DD No. 37A (Ex. PW-3/D) was recorded on 22.7.2006 at 10.12 PM noting the information about Sanju

Devi wife of Dinesh Rao had been attacked in her jhuggi. This DD was marked to PW-14, who on reaching the spot had noted that the injured

had already been removed to the hospital by H.C. Mahender Pal (PW-15) who was on PCR duty at that time. PW-14 recorded the statement of

the injured in the hospital. The rukka was handed over to Const. Pawan (PW-7) pursuant to which the FIR (Ex. PW-3/A) was registered.

6. At the spot rough site plan Ex. PW-14/C was prepared and thereafter the scaled site plan was prepared by SI Mahesh Kumar (PW-12) vide

memo Ex. PW-12/A depicting the incident having occurred inside the jhuggi of the victim. Statement of the witnesses was recorded. Crime team

was summoned and photographs of the spot were taken; they were however, not proved.

7. The MLC (18157) of the victim was prepared on 22.7.2006; it has been proved as Ex. PW-1/A noting sharp injuries with a blunt weapon

upon the person of the victim. Victim had been admitted to the surgical unit for surgery. She died two days later i.e. on 24.7.2010. Post mortem on

the deceased was conducted by Dr. S. Deha. The post mortem report Ex. PW-10/B was proved by Rishi (PW-10); he had identified the

signatures of Dr. Deha who had since left the hospital. Death summary of the victim was also proved by him as Ex. PW-10/A.

8. Ex. PW-10/B had noted 14 injuries upon the victim; they read as follows:

1. One surgical stitched wound Rt paramedian linear wound of 21 cm and 25 nos. of stoeppler on it, on opening the wound the muscle, skin and

peritoneum area stitched in layers, abdominal cavity deep (spleentory done), stump of spleentory wound with clot around it detected perineal

cavity is filled with blood (liquid). On the drain outlet is seen on the left lumber region of the abdomen, blood oozing out from it.

2. Stitched wound over the right forearm vertically placed with 4 (four) silk threads, on opening 5 cm X.5 cm wound of muscle depth detected

lacerated.

3. Contusion over the right elbow, 3 cm vertically of 5 cm X 2 cm bluish brownish colour.

4. Contusion over the right forearm 2 cm X 1 cm brownish blue colour 5 cm below right elbow on the dorsal aspect.

5. Contusion over the right arm of 5 cm X 3 cm and 15 cm below tip of the shoulder bluish brown colour.

6. Contusion over the left anterior of the chest 10 cm from the tip of the left shoulder of 5 cm X 2 cm and bluish blown colour.

7. Abrasion over the left knee joint lateral side of 1 cm X 1 cm of brownish black colour

8. Abraded contusion of 1 cm X 1 cm over the left leg just below the left knee of brown colour

9. Abraded contusion over the right leg radish black in colour. Post medially and 10 cm above right medial malleolus.

10. Patterned bruise detected over the buttock on the right side of 20 cm X 10 cm area and 10 cm below right backwards from right iliac crest.

11. Patterned bruise on the left buttock of 15 cm and 10 cm area of 15 cm from left iliac crest, collection of blood (haemotoma) on both buttocks

detected.

12. Contusion 8 cm x 2 cm detected over the right renal angle on section haemotoma of underlying _____ detected.

13. Abrasion over the left to web space of 2 x 0.5 cm brownish blue colour.

14. Abraded contusion over left sub postal region of 2 cm x 1 cm and 24 cm above left iliac crest and 17 cm below left nipple radish brown

colour.

9. The cause of death was recorded as shock and haemorrhage consequent to the injuries sustained. All the injuries were ante mortem and

consequent to the blunt force; except injury no. 1 all injuries could have collectively caused the death of the victim.

10. The accused persons were arrested. Accused Tilisra was arrested vide memo Ex. PW-16/A at the pointing out of PW-5; her disclosure

statement Ex. PW-14/D was recorded. Accused Kamal Kishore was arrested vide memo Ex. PW-14/F and his disclosure statement Ex. PW-

14/H was recorded. Subsequently accused Munni Lal was apprehended and arrested vide memo Ex. PW-14/I, his disclosure statement Ex. PW-

14/K was recorded. Pursuant to this disclosure statement he had got recovered the weapon of offence i.e. a danda measuring two feet which was

seized and taken into possession vide memo Ex. PW-14/2; it was sealed with the seal of MKS; the place of incident was also pointed out by him

vide memo Ex. PW-14/N.

11. The subsequent opinion of the doctor on the weapon of offence was obtained by Inspector M.S. (PW-18) vide opinion Ex. PW-18/C who

had opined that this weapon could have caused injuries upon the victim.

12. On the basis of the aforenoted collected evidence the accused persons were charge sheeted and charges u/s 302 read with Section 120B(1)

of the IPC were framed against all three of them. A separate charge u/s 452 IPC read with Section 34 IPC was framed against accused Munni Lal

and accused Tilisra.

13. The prosecution in support of its case had examined 19 witnesses. Statement of the accused persons were recorded u/s 313 of the Code who

pleaded innocence and stated that they have been falsely implicated in the present case.

14. No evidence was led in defence.

15. The accused persons were convicted and sentenced vide the impugned judgment. This judgment is the subject matter of appeal.

16. On behalf of the appellant Munni Lal arguments have been addressed by Mr. R.K. Anand, Advocate. Attention has been drawn to the

testimony of PW-4, the daughter of the victim, who has been projected as an eye-witness as also PW-8, the sister of the victim. Learned counsel

for the appellant points out that there are discrepancies in the aforenoted two versions and the prosecution has failed to establish that PW-4 was in

living with her mother at the relevant time; it has been argued that the victim and her husband did not share cordial relations and their daughter PW-

4 was in fact living with her father in U.P.; she was not an eye-witness. Even otherwise PW-4 and PW-8 both have stated that they had

accompanied the victim to the hospital but this stand stood controverted by PW-15 who had removed the injured to the hospital and has

categorically in his cross-examination admitted that the sister and the daughter of the victim had not accompanied him to the hospital. Attention has

also been drawn to the medical report of the victim i.e. the MLC Ex. PW-1/A. It is pointed out that the versions of the PW-4 and PW-8 that the

victim had been discharged after a prima facie check-up and appeared to be normal and it was only on her way home that she felt faint and was

taken back to the hospital but this version of PW-4 and PW-8 is not borne out from Ex. PW-1/A which has neither noted any discharge nor has

any re-admission been noted in the said MLC. The two versions cannot be reconciled. Learned counsel for the appellant submits that at best this

could be a case of knowledge on the part of the accused persons that by their act they could have caused such injuries upon the person of the

victim which had led to her death; there was no premeditation and common intention on the part of the accused to cause murder of the victim; the

conviction is liable to be set aside. To support this submission, learned counsel for the appellant has placed reliance upon the judgments of the

Supreme Court reported as Satish Narayan Sawant Vs. State of Goa, ; Dhan Singh Vs. State of Haryana, as also another judgment of the Apex

Court report in Shankar Narayan Bhadolkar Vs. State of Maharashtra, Submission being in all these cases that even graver weapons of offence

had been used and the injuries had been on vital parts of the body yet in all the aforenoted cases the Apex Court had thought it a fit case to reduce

the offence of murder to an offence u/s 304 Part-II of the IPC. Learned counsel for the appellant thus submits that the conviction of the appellant

can at best be one u/s 304 Part-II of the IPC.

17. On behalf of accused Tilisara arguments have been addressed by Advocate Mr. Dandapani. He has adopted the stand taken by counsel for

the accused Munni Lal. It is pointed out that the role ascribed to Tilisara is even lesser that that of Munni Lal as Munni Lal was carrying a danda

whereas Tilisra was unarmed; even as per the version of the prosecution she had hit the victim only by fist and blows. Conspiracy has also not

been established.

18. On behalf of the accused Kamal Kishore arguments have been addressed by Advocate Mr. Trivedi. It is pointed out that apart from the

disclosure statement of the co-accused no other evidence is forthcoming against him; even pursuant to the disclosure statement of the accused no

recovery has been effected. There is, thus, no evidence in the eye of law. Attention has been drawn to the version of PW-4 and PW-8 who have

been projected as star witnesses of the prosecution. Submission being that in their statements recorded u/s 161 of the Code no role of beating had

been ascribed to Kamal @ Baba. His name has been reflected for the first time only in their depositions on oath in court which is a material

improvement qua their versions before the police. No reliance can thus be placed upon such an evidence. Accused Kamal @ Baba is entitled to an

acquittal.

19. Arguments have been rebutted by the prosecution. Learned Public Prosecutor points out that the testimony of PW-8 who is an eye-witness

remain untarnished. Her statement was corroborated by her mausi PW-4. The medical report also speaks volumes. The cause of death was the

result of injuries inflicted upon the victim by the accused person; the conviction call for no interference.

20. Record has been perused.

21. The information about the incident had been received by PW-15 H.C. Mahender Pal Singh who was on duty and In-charge of PCR at about

10.00 PM on the fateful day. He had on reaching the spot removed the injured to the DDU Hospital. He conveyed this information to the local

police station which was recorded in DD No. 54 B (Ex. 16/A) and which had noted the time as 10.12 PM. This information was to the effect that

one Sanju Devi had received stab injuries and the information had been conveyed by her daughter. Ex. PW-16/A was marked to SI Jitender

(PW-14) who was the initial investigating officer of this case. On reaching the spot he noted that injured has already been removed to the hospital

by PW-15; she had been admitted vide MLC No. 18157. The time of admission was recorded as 11.25 PM by Dr. Rishi (PW-1). The MLC

further notes a history of assault on the victim. Patient, however, appeared to be conscious and well oriented at that time. Her pulse was recorded

at 78 beats per minute; her blood pressure was noted as 100/60. Three injuries on local examination had been noted:

i. Clear incised wound on left forearm 3 x 0.5 x 0.5 cm.

ii. Clear incised wound on left hand 2nd web space 2 x 0.4 x 0.4 cm.

iii. Tenderness over left side of lower chest abrasion present.

PW-1 has categorically deposed that no abnormality was detected clinically at that time; patient was kept under observation. It was at this point of

time that PW-14 had obtained a fitness from concerned doctor vide his application Ex. PW-14/A; the statement of the injured Sanju Devi was

recorded as Ex. PW-1/A1. This statement had described the incident; victim had told the IO that accused Tilisara and accused Munni Lal had

entered her Jhuggi and while Tilisara pinned her down on the floor by catching hold her hair and beat her with fists; Munni Lal had beaten her with

a danda and had also attacked her on her forearms with a sharp object; she started crying in pain. Her neighbour Vijay Laxmi (PW-5) reached the

spot. No role had been attributed to Kamal Kishore. It was on this statement that the FIR (Ex. PW-3/A) was registered; it was at 2.30 AM on

23.7.2006.

22. A first information report relates to a commission of an offence given to the police and recorded by it u/s 154 of the Code. Commenting on the

object and value of a first information report; the Supreme Court in Sheikh Hasib alias Tabarak Vs. The State of Bihar, has noted as under:

The principal object of the first information report from the point of view of the informant is to set the criminal law in motion and from the point of

view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps for tracing and

bringing to book the guilty party. The first information report, we may point out, does not constitute substantive evidence though its importance as

conveying the earliest information regarding the occurrence cannot be doubted. It can, however, only be used as a previous statement for the

purpose of either corroborating its maker u/s 157 of the Indian Evidence Act or for contradicting him u/s 145 of that Act. It cannot be used for the

purpose of corroborating or contradicting other witnesses.

23. Apart from the fact that lodging of an information u/s 154 Cr.P.C. keeps the District Magistrate and the Superintendent of Police informed of

the occurrence and when recorded, it in fact becomes the basis of the case set up by the informant and provides material to the police to

commence investigation. Its fundamental object is that it acts as a safeguard against embellishment, exaggeration and forgetfulness. It may not

constitute a substantive piece of evidence, but it is a conveyance of the information at the earliest and cannot be doubted.

24. In the instant case the sequence of evidence shows that the incident having occurred at 9.30 PM and the PCR having reached the spot at

about 10.00 PM. Attar Singh (PW-2) owner of the STD booth from where the PCR call was made between 9-10 PM by a young girl aged 11-

12 years is also corroborative. DD entry in the local police station having been recorded at 10.12 PM and thereafter the injured having been

brought from her residence at Anand Parbhat to the DDU Hospital (which itself might have taken 40-45 minutes); the MLC (Ex. PW-1/A)

mentions the time of arrival at 11.25 PM at which time the patient also appeared to be conscious and well oriented. It was in this intervening period

that PW-14 recorded the statement of Sanju Devi which had then become the basis of the FIR. This sequence of events as detailed in the ocular

testimony of the witnesses (PW-4, PW-8, PW-14 and PW-15) matched the recorded information, both in the DD entry as also in the MLC.

25. PW-8 is an eye-witness. She is the daughter of the victim; she was aged less than 12 years at the time of incident and approximately 12 years

at the time of deposition in the Court. Her statement recorded before the Magistrate as also on oath in Court was after a preliminary round of

questions put to her to enable the Court to draw a conclusion that she was able to intelligently and rationally understand the said queries. She had

matched her statement on oath with her statement recorded before the police. She categorically stated that on 22nd day of the month at about

9.30 PM while she was in the "Chapper" in front of her jhuggi (being a part of the jhuggi) she saw both the accused Tilisara and Munni Lal come

inside their jhuggi; Munni Lal was armed with a danda. Tilisara caught hold of her mother from her hair and pinned her down to the ground; Munni

Lal started beating her mother with danda blows. Her mother raised alarm and Baba (third accused) thereafter started beating her mother with fists

and kick blows; they were all asking her mother to vacate the jhuggi as Baba @ Kamal had a tent shop adjacent to their jhuggi. Police was called.

Her mausi Manju Devi (PW-4) living close by was informed. When PW-8 returned back to her jhuggi along with PW-4 she saw her mother lying

unconscious. Her mother was removed to the hospital. In her cross-examination she has stuck to her stand. She denied the suggestion that she was

not an eyewitness. She admitted that in her statement u/s 161 of the Code she had not mentioned that Baba @ Kamal had attacked her mother;

she has also admitted that initially the doctor has discharged her mother but thereafter she was re-admitted because after her discharge she had

fainted; she had further admitted that she had gone to hospital with her mother and mausi.

26. PW-4, the mausi of PW-8, has corroborated this version of her niece. Her deposition is to the effect that at 9.30 PM her niece came to her

jhuggi informing her that her mother has been attacked by Munni Lal and Tilisara. On her reaching the jhuggi of her sister she found her sister lying

in a pitiable condition; her sister informed her that she had been beaten by danda blows by Munni Lal and Tilisra had given her fists and kick

blows; they had both entered her jhuggi asking her to vacate it. In her cross-examination she had stated that she had accompanied her sister and

niece to the hospital. She admitted that after the treatment was given to her sister, she was discharged and when they were on the way back since

her sister became unconscious she was taken back to the hospital re-admitted; She was advised X-ray and ultrasound; blood was also

administered to her as she had undergone a surgery; she died on the following day because of a spleen ruptured.

27. This testimony of PW-4 in fact discloses that Sanju Devi had made a dying declaration to her, which statement had then become the basis of

the FIR. Not only can the FIR which is a recorded document (within less than five hours from the time of incident) be disbelieved but the statement

of PW-4 which is in corroboration of the testimony of PW-8 also shows no reason as to why the aforenoted accused persons would be implicated

falsely. In fact no suggestion has also been given to either PW-4 or PW-8 on this count that they were deposing falsely and against the accused

persons for any ulterior motive.

28. The medical record which is the MLC and the post mortem report also substantiates the version of the prosecution. The MLC (Ex. PW-1/A)

shows that initially when the patient had been brought in she appeared to be conscious and well oriented; there was no clinical abnormality.

Thereafter within a span of less than a few hours she was admitted to the surgical unit of the hospital where she was operated upon. Dr. Sanjay

Singh, Senior Resident Surgery, of the DDU Hospital has clarified that the patient remained in the hospital and was not readmitted after discharge.

Testimony of PW-4 and PW-8 on this count can be reconciled by the fact that the patient was never formally discharged even though the doctor

who had prepared her MLC had noted that she was clinically normal. She had in fact been kept under observation. PW-4 and PW-8 at that point

decided to take the patient home when on the way patient had fainted and was then in an emergent condition admitted in the surgical unit. The

death summary report (Ex. PW-10/A) evidences that the patient had been operated upon on 23.7.2006 for a spleen rupture; at 6.25 P.M. while in

the post operative care information was received that she needed urgent medical attention; she was shifted to the ICU but in spite of best efforts

she could not be saved. She was declared dead at 7.30 P.M. on 24.7.2006. Cause of death had been opined as abdominal trauma with spleen

rupture (post OP) and cardiac arrest. This medical record clearly establishes that it was because of the injuries suffered by the victim at the hands

of the accused persons that her death had occurred.

29. Reliance by the learned counsel for the appellant on medical opinion about a ruptured spleen would not really assist his case because this was

not a case of a single injury i.e. of only a spleen rupture alone; it is a case of 14 injuries upon the victim of which the first injury was a deep

abdominal injury which had led to the ruptured spleen.

30. Pursuant to the disclosure statement of accused Munni Lal, the danda was recovered (Ex. PW-14/E). The subsequent opinion of the doctor

on this weapon of offence (Ex. PW-19/A and Ex. PW-18/C) also establishes that this weapon could have in fact caused the injuries upon the

victim and which had led to her death.

31. The motive of the crime has been elicited in the version of the aforenoted two PWs i.e. PW-4 and PW-8. Both of them have deposed that

accused Munni Lal and Tilisra wanted to get the victim evicted from her jhuggi at the behest of Kamal @ Baba who was running a tent house and

was storing his tents in the place adjacent to the jhuggi of Sanju Devi.

32. The sum total of the evidence thus establishes that both the accused Munni Lal and Tilisra had in unison entered the jhuggi of the victim and had

given her fist and kick blow which were followed by danda blows; which in turn caused her death in the next one and half days. It was a concerted

act; each one knew the mind of the other when they entered the jhuggi of the victim. Their conspiracy to commit the act stands established.

33. Role of the co-accused Kamal @ Baba is, however, not clear. Prosecution has no evidence against him. Apart from his disclosure statement

there is no other evidence to nail him. No recovery has also been effected pursuant to his disclosure statement. That apart even in the first version

recorded of PW-4 (star witness of the prosecution) she has not named Kamal @ Baba as an assailant; his role has been elicited for the first time

only in her version in Court. Even on confrontation she had admitted this stand. Sanju Devi in her statement had also not named him. There, thus,

being no evidence against accused Kamal @ Baba, he is entitled to an acquittal; he is accordingly acquitted.

34. The last submission made by the learned counsel for the accused Munni Lal and Tilisra however needs attention. Learned counsel for the

appellant has argued that even presuming that death had occurred at the hands of the aforenoted accused persons; this was not a case of any

premeditation or intent to commit murder. The weapon of offence was only a danda; that apart accused Tilisra was unarmed; the injuries had also

not been caused on any vital part of the body; apart from injury no. 1 which was in the abdominal cavity all other injuries were mere bruises; the

conviction should be altered to one u/s 304 Part-II of the IPC.

35. Relevant would it be to extract the provisions of Section 304 of the IPC which read as under:

304. Punishment for culpable homicide not amounting to murder.-

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description

for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing

death. or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the

knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

36. When a person is killed, it is not always a case of murder. The intention to commit the act is relevant to decide under which penal provision the

case of the accused would fall. If the case of the accused falls in any of the exceptions contained in Section 300 of the IPC his offence would be

punishable u/s 304 IPC. The line of distinction between offences falling in Part-I and those falling in part-II of Section 304 of the IPC may be thin

but nevertheless distinct. The first part connotes an intention and second part attributes a knowledge to the accused.

37. It is on this touchstone that the act of the accused persons has to be analyzed.

38. Accused Munni Lal was armed with a danda; it was two feet long. The accused Tilisra (wife of the accused Munni Lal) was unarmed; she had

attacked the victim with her legs and fists.

39. In this background, keeping in view the nature of the weapon of offence; the fact that the second accused was unarmed; as also the fact that

the injuries were not on any vital part of the body it cannot be said the accused persons had any pre-design to commit the murder of the victim.

The degree of seriousness of the injuries has also been noted. The version of the victim that stab injuries were also inflicted upon her is neither

borne out from the medical record nor any such weapon has been recovered.

40. Accused persons can thus be attributed with a knowledge that by their act they could cause such bodily injuries upon the victim as is likely to

cause her death.

41. In a similar situation in the case of Satish Narayan (supra) where there was only one injury caused by stabbing on the back of the deceased

and had proved to be fatal and initially the accused was unarmed and later on he had taken a kitchen knife the offence u/s 302 was converted to an

offence u/s 304 Part-II of the IPC. In Dhan Singh (supra) the Apex Court had noted that no straightjacket formula can be adopted in such like

cases; it depends upon facts and circumstances of each case. In this case also accused persons had entered the house of the victims and opened

attack upon the victim; the offence was altered from 302 to 304 Part-II of the IPC. In Shanker Narayan (supra) a gun was used; it was fired upon

the deceased pursuant to which he sustained injuries; offence u/s 302 was converted to an offence u/s 304 Part-II of the IPC.

42. Both the accused persons (Munni Lal and Tilisra) are accordingly convicted u/s 304 Part II of the IPC. Accused Munni Lal has suffered

incarceration for about eight years. Accused Tilisra had been granted bail vide order dated 17.10.2011. At that time she had already undergone a

sentence of about more than four years and six months. She had a young daughter aged four at that time; she would be less than six years as on

date. The offence has been committed more than seven years ago. The fact that Tilisra was unarmed also cannot be lost sight of. In this

background, this Court is of the view that ends of justice would be met if the accused persons are sentenced to undergo imprisonment for the

period already undergone by each of them.

43. The appeal is modified in the aforenoted terms and disposed of accordingly. Accused Munni Lal be released forthwith if not required in any

other case. Bail bond and surety bond of accused Tilisra be cancelled. A copy of this order be sent to the Jail Superintendent for intimation and

compliance.