# Raj Mohmad Usman Sayyed Convict No. 14683, Circle: 3/6, Yerwada Central Prison, Pune - 411006 Vs The State of Maharashtra

## Criminal Appeal No. 255 of 2007

**Court:** Bombay High Court

**Date of Decision:** Feb. 22, 2012

**Acts Referred:**
Criminal Procedure Code, 1973 (CrPC) â€" Section 313#Penal Code, 1860 (IPC) â€" Section 302, 304, 307, 324

**Citation:** (2012) BomCR(Cri) 840

**Hon'ble Judges:** Shrihari P. Davare, J; A.P. Lavande, J

**Bench:** Division Bench

**Advocate:** D.G. Khamkar, for the Appellant; D.P. Adsule, Assistant Public Prosecutor for State, for the Respondent

## Judgement

Davare, J.
Heard learned counsel for the parties.

2. By the present appeal, the appellant i.e. the accused takes exception to the conviction and sentence imposed upon him by judgment and order

dated 31.3.2006 rendered in Sessions Case No. 70 of 2005, by 1st Ad-hoc Additional Sessions, Judge, Baramati, convicting him for the offence

punishable u/s 302 of Indian Penal Code and sentencing him to suffer rigorous imprisonment for life with fine of Rs. 1000/- and in default to suffer

simple imprisonment for three months and also convicting him for the offence punishable u/s 307 of Indian Penal Code and sentencing him to suffer

rigorous imprisonment for 10 years with fine of Rs. 500/-, in default to suffer simple imprisonment for one month.

3. The factual matrix of the prosecution case is as follows:

It is alleged that the appellant Raj Mohmad Usman Sayyad (hereinafter referred to as Ã¯Â¿Â½the accusedÃ¯Â¿Â½ for the sake of brevity) intentionally

caused the death of his daughter, namely, Dilshad and attempted to commit murder of his wife Tahira, on 7.7.2005, at Village Deulgaon (Rasal),

Taluka Ã¯Â¿Â½ Baramati, Dist. Pune. It is also alleged that the accused married with PW-1 Tahira, and out of the said wedlock three daughters,

namely, Sana, Dilshad and Karishma and one son, namely, Tayyab were born. However, PW-1 Tahira allegedly had illicit relations with one

Shafiq Makbul Inamdar but her husband i.e. the accused herein was not aware of the said fact. It is further alleged that, on 5.7.2005, after the

dinner, the accused, his wife Tahira and children went to sleep but in the midnight at about 1.30 a.m. PW-1 Tahira came outside the house as

agreed by her with said Shafiq and both of them went on the Ã¯Â¿Â½ChhapparÃ¯Â¿Â½ i.e. the portion adjacent to the kitchen. Thereafter, while Shafiq was

rubbing her chaste, her husband i.e. the accused herein came outside the house and saw the said incident and caught both of them red-handed in

compromising position. Thereupon, he gave kicks and fist blows to his wife PW-1 Tahira. The children also woke up and accused asked his wife

to leave his house and reside with Shafiq but Tahira begged his pardon. Thereafter, on 6.7.2005 there was a weekly bazaar day of the village

Supa, and hence, her husband i.e. the accused went to Supa but did not return back on the same day.

4. It is also the case of the prosecution that, on 7.7.2005 when all the children had gone to the school and when PW-1 Tahira - the first informant,

returned along with she-goats at about 4.00 p.m. and while she was cleaning the house, her husband returned to the house and took a knife and

threatened her that he would finish her and thereafter he assaulted her with the knife on her right shoulder, right cheek, forehead and also on

abdomen. Thereupon PW-1 Tahira was frightened and went outside the house but the accused went behind her and assaulted her but after

shouting Ã¯Â¿Â½Wachava WachavaÃ¯Â¿Â½ she rescued herself and ran away. It is also alleged that the said incident was witnessed by Sharifa Inamdar,

Raj Mohmad Inamdar and Naseem Inamdar. Due to the fear, PW-1 Tahira concealed herself in the old dilapidated house. It is further alleged that

at about 5.00 p.m., two daughters of the accused and Tahira, namely, Dilshad and Karishma returned from the school and thereupon the accused

removed a stone from the Ã¯Â¿Â½OtiÃ¯Â¿Â½ portion and caused to fell down daughter Dilshad and threw the stone on the head of Dilshad. Whereas,

another daughter Karishma escaped herself. The nearby villagers gathered at the spot and caught hold of the accused. Thereafter, the first

informant PW-1 Tahira came near her daughter Dilshad and found that she was no more.

5. Hence, PW-1 Tahira rushed to Vadgaon-Nimbalkar police station where PW-9 A.P.I. Prabhakar Shinde was attached to the said police

station at the relevant time, who recorded the F.I.R. Exh.9 of the first informant PW-1 Tahira and an offence was registered against the accused

under C.R. No. 56 of 2005. Thereafter, PW-9 A.P.I. Prabhakar Shinde proceeded to the spot of incident and drew the inquest panchanama

Exh.22 of the dead body of Dilshad and thereafter sent the said dead body to Primary Health Centre, Morgaon for postmortem purpose. PW-8

Dr. Mahesh Jagtap was attached to the said Primary Health Centre, Morgaon as a Medical Officer and he carried out postmortem on the said

dead body of Dilshad on 8.7.2005 and noted injuries thereon in postmortem notes which are produced at Exh.24.

6. It is further the case of the prosecution that PW-9 A.P.I. Prabhakar Shinde prepared the spot panchanama Exh.14 in presence of panch witness

PW-3 Manik G. Nimbalkar and seized one blood stained knife, blood stained stone and blood stained soil thereunder on 8.7.2005. PW-9

Prabhakar Shinde also arrested the accused and his clothes were seized under the panchanama. Moreover, the blood stained blouse and saree of

the first informant PW-1 Tahira were also seized under the panchanama Exh.16 in presence of PW-4 Balu Kazi on 8.7.2005. The school uniform

of deceased Dilshad was also seized under the panchanama Exh.19 in presence of panch witness PW-6 Anil Gaikwad on 8.7.2005. PW-9 A.P.I.

Prabhakar Shinde also recorded the statements of witnesses during the course of investigation. The accused was also sent for medical examination

along with letter Exh. 27 and also the first informant PW-1 Tahira was sent to the Medical Officer, Government Hospital, Supa, along with letter

Exh. 28 on 13.7.2005 and her blood was collected for sample purpose. Thereafter, the seized articles were sent to the Chemical Analyzer for

examination purpose along with forwarding letter Exh. 29 and the Chemical AnalyzerÃ¯Â¿Â½s reports thereof were received which are produced at

Exhs. 30 to 32 respectively. Accordingly, after completion of the investigation charge-sheet was filed against the accused before the Judicial

Magistrate First Class, Baramati. However, since the said case was exclusively triable by the Court of Sessions, Baramati, it was committed to the

said Court. Accordingly, learned First Ad-hoc Additional Sessions Judge, Baramati, framed charge against the accused at Exh. 3 for the offence

punishable under Sections 302 and 307 of Indian Penal code, on 29.11.2005. However, the accused pleaded not guilty to the said charges and

claimed to be tried.

7. To substantiate the charges levelled against the accused, the prosecution has examined as many as 9 witnesses as mentioned below:-

(1) PW-1 Ã¯Â¿Â½ Tahira Rajmohmad Sayyad, wife of the accused.

(2) PW-2 Ã¯Â¿Â½ Karishma R. Sayyad, daughter of the accused and PW-1 Tahira Rajmohan Sayyad.

(3) PW-3 Ã¯Â¿Â½ Manik G. Nimbalkar, panch witness to the spot panchnama Exh. 14.

(4) PW-4 Ã¯Â¿Â½ Balu Abdulbhai Kazi, panch witness to the seizure of blouse and saree of PW-1 under seizure panchanama Exh. 16.

(5) PW-5 Ã¯Â¿Â½ Sameer Kadharbhai Inamdar, brother of victim Dilshad.

(6) PW-6 Ã¯Â¿Â½ Anil Prabhakar Gaikwad, panch to the seizure of school uniform of victim Dilshad under panchanama Exh. 19.

(7) PW-7 Ã¯Â¿Â½ Tayyab Rajmohmad Sayyad, eye-witness and son of the accused and PW-1 Tahira.

(8) PW-8 Ã¯Â¿Â½ Dr. Mahesh Sopanrao Jagtap, who performed postmortem on the dead body of victim Dilshad and produced postmortem notes at

Exh. 24.

(9) PW-9 - Prabhakar Mahipati Shinde, Investigating Officer.

8. The defence of the accused is of total denial and he submitted in the statement recorded u/s 313 of the Criminal Procedure Code that he was

residing at his native place after marriage and all the children were born to him at the said place. Thereafter he came to village Sonpeerwadi about

three years back before the incident. According to him, he saw his wife Tahira along with Shafiq Inamdar while they were behaving in disorderly

manner, and hence, he asked explanation from his wife Tahira and thereafter a quarrel took place between them, and therefore, his wife and her

relatives had a grudge against him. The accused further submitted that on the day of the incident, a quarrel took place with his wife and thereafter

while running, she received minor injuries. He also stated that his daughter Dilshad, while coming from the school by running, fell on the Ã¯Â¿Â½OtiÃ¯Â¿Â½

portion of his house on stone and she died on the spot, and thereafter, he embraced her dead body and while he was taking Dilshad towards

hospital, his clothes were stained with blood and taking the disadvantage of this fact, his wife PW-1 Tahira and other relatives and Shafiq Inamdar

filed a false case against him. According to the accused, all the witnesses examined by the prosecution, are relatives of his wife and said Shafiq. He

also stated that since the complainant apprehended that she would not be allowed to cohabit with him, the witnesses gave false evidence in the

Court against him at her instance. Accordingly, the accused submitted that he has been implicated in false case and he claimed to be innocent.

However, the accused neither examined himself on oath nor examined any defence witness to substantiate his aforesaid defence. Accordingly, after

appreciating and assessing the evidence on record and after considering the rival submissions advanced by the learned counsel for the parties, the

learned Trial Court convicted and sentenced the accused for the offences punishable under Sections 302 and 307 of Indian Penal Code,

respectively, as aforesaid. Being aggrieved and dissatisfied by the said conviction and sentence, the accused has preferred the present appeal

assailing the same, and prayed for quashment thereof.

9. In order to deal with the submissions advanced by learned counsel for the parties, it is necessary to advert to the material evidence

adduced/produced by the prosecution and in the said context, the testimony of PW-1 Ã¯Â¿Â½ the first informant carries the prime importance, wherein

she stated that accused is her husband and she has four children from him, out of which three are daughters, namely, Sana, Dilshad and Karishma

and a son, namely, Tayyab. Her daughter Dilshad was about 10 years old and all the said children were taking education at Sonpirwadi. Dilshad

and Karishma used to go to school at about 10.00 a.m. and used to return at about 5.00 p.m. Her husband i.e. the accused herein, was working

as labourer and she used to run a grocery shop in the house and also used to maintain she-goats. Sharifa Inamdar, Rajmohmad Inamdar and

Nasim Inamdar were residing in fron of her house, whereas Shafiq Makbul Inamdar was residing at Sonpirwadi. She further deposed that Balu

Kazi and Eqbal Kazi were residing in the same village. According to her, the incident took place after 9.00 p.m. when she was sleeping along with

her children and husband, when at about 1.30 a.m. she heard the noise of the door and, therefore, she opened the same and saw that Shafiq

Inamdar was standing outside the door, who caught hold of her hand and she asked him to leave her hand but he did not leave it and pulled her

towards him. At this juncture, her husband who was sleeping in the house, woke up and came outside and saw the incident and, therefore,

assaulted her by stick, and thereupon, Shafiq ran away towards his house. She also stated that on the next day, it was a weekly bazaar day at

village Supa and the accused caused injury to her by knife although she begged her pardon to him. However, the accused asked her to hand over

all the ornaments and threatened to kill her by knife. Thereupon she gave ornaments to him. Thereafter the accused went to Supa but did not return

back on the same day.

10. PW-1 Tahira further stated that, on the next day the accused returned to the house at about 5.00 p.m. along with knife when she was

preparing tea and threatened her to cause injury by knife. Thereupon, she persuaded him by folding hands, but the accused threatened her to kill

and gave blows of knife on the right hand wrist, right cheek, head and on right side stomach. Thereupon, she shouted Ã¯Â¿Â½Mala wachava

wachavaÃ¯Â¿Â½ and in response Sharifa Inamdar, Raj Mohmad Inamdar and Naseem Inamdar came there and they rescued her. Due to fear she

concealed herself in a house in dilapidated condition. She further stated that, by that time, her daughters returned back from the school and asked

the accused about PW-1 Tahira. Thereupon, he replied that he had killed their mother. Thereafter, the accused caused to fell down her daughter

Dilshad on the Ã¯Â¿Â½OtiÃ¯Â¿Â½ portion of the house, thereby she sustained head injury and died on the spot. Thereafter, Balu Kazi and Iqbal Inamdar

arrived there and rescued her and other daughters from the hands of the accused. Moreover, the persons gathered on the spot also caught hold of

the accused and took away his daughters. The persons gathered at the spot also informed the police personnel who arrived there. Thereafter, PW-

1 Tahira filed a complaint with Vadgaon-Nimbalkar Police Station which is treated F.I.R. Exh. 9. Thereafter, inquest panchanama of the said dead

body was drawn and the frock of Dilshad was seized under panchanama and PW-1 Tahira was sent to Silver Jubilee Hospital, Baramati, for

medical treatment.

11. During the cross-examination, she admitted that houses of her all such relatives are surrounded to her house. She further admitted that, her

relatives told her that she should involve the accused, and Shafiq Inamdar and her relatives told her in what manner the complaint should be

lodged, and accordingly, she lodged the complaint. She also admitted that, her relatives told her that if the accused is released, he would kill her

and, therefore, she wanted that the accused should not be released. She admitted the omissions that she has not stated while recording her

complaint that at about 1.30 a.m. Shafiq Inamdar knocked the door and she told him that he should leave her hand but he still caught hold of her

hand and pulled her towards him. She also admitted that she did not state before the police that accused assaulted her with the handle of an axe as

well as she has not stated before the police that on the next day morning the accused asked her to remove all the ornaments and she gave the same

to him. Moreover, the accused put his case to PW-1 Tahira in the cross-examination that scuffle took place between her and the accused in front

of her house and due to the said scuffle she received injuries and while the said scuffle was going on, daughter Dilshad ran towards her and while

running she fell down on Ã¯Â¿Â½OtiÃ¯Â¿Â½ portion of her house and sustained injuries, but same was denied by her. However, she admitted that she learnt

later on regarding the injuries sustained by her daughter Dilshad. Suggestion was given to her that she stated falsely that the accused caused injuries

to daughter Dilshad since she desired that accused should not be released but same was denied by her. It was also suggested to her that since she

was having illicit relations with Shafiq Inamdar and the accused was the hindrance in the said relations, she deposed falsely against him, but same

was denied by her. She also denied that the death of her daughter was accidental death.

12. That takes us to the deposition of PW-2, namely, Karishma Sayyad i.e. the alleged eye-witness who is the child witness, and she has stated

that she was studying in the 1st Standard at the relevant time and she was residing at Sonpeerwadi along with her mother, brother and sister and

deceased Dilshad was her sister. She also stated that accused thrown stone on her sister Dilshad, but, at that time she was outside the house and

she was on the Ã¯Â¿Â½ChhapparÃ¯Â¿Â½. She has further stated that her mother received injury by axe. In the cross-examination, she admitted that her

mother told her about the questions to be put to her in the Court as well as replies thereto. She further stated that after the school hours were over,

she was coming to her house along with her sister Dilshad who was lying on stone. Suggestion was given to her that since she was sitting on the

Ã¯Â¿Â½ChhapparÃ¯Â¿Â½, she could not witness anything but same was denied by her.

13. Turning to the evidence of another eye-witness i.e. PW-7 Tayyab Sayyad i.e. the son of the accused who stated that he was studying in 5th

Standard at the relevant time and he had three sisters, namely, Sana, Karishma and Dilshad. His school hours are from 10.45 a.m. to 4.30 p.m.

and he used to attend Vasantrao Pawar Vidyalaya, Deulgaon-Rasal school. He also stated that the incident took ploace at about 5.00 p.m. on the

relevant day, when his sister Dilshad came to house and his father gave a chocolate to him and his sisters namely, Dilshad, Sana and Karishma and

told them that he would finish them. Thereafter, his father i.e. the accused caused to fell down his sister Dilshad and the accused threw a stone on

her head and chaste due to which Dilshad died, and they were frightened and ran away, whereas Balu Kazi and Eqbal Inamdar had caught hold of

the accused. Thereafter, his mother i.e. PW-1 Tahira met him and saw the injuries sustained by Dilshad. In the cross-examination, he admitted that

he came to the house after half an hour after arrival of her sister Dilshad. Suggestion was given to him that when he came from school he saw that

Dilshad was lying on the ground and the people were gathered, but same was denied by him. It was also suggested to him that his mother taught

him how to depose before the Court, but same was denied by him. He further admitted that he was tutored by his mother and maternal uncle.

14. That takes us to the medical evidence of PW-8 Dr. Mahesh Jagtap, who has deposed that on 8.7.2005 he was attached to Primary Health

Centre, Morgaon as a Medical Officer and the dead body of Dilshad, aged about 10 years, was brought by P.S.I. Vadgaon police station for

postmortem. Accordingly, he performed the postmortem on the said dead body which is produced at Exh. 24. He also noted the following injuries

on the dead body of Dilshad:

(i) CLW over right temporal part of skull, extending downwards to pinna of right ear. Size 10 cm x 2 cm x 1 cm.

(ii) CLW over left side of forehead near left eye. Size 5 cm x 2 cm x 1 cm.

He further stated that the age of the above two injuries were within 24 hours and both the injuries were caused by hard and blunt object. He

further stated that injuries were noted on palpation, depressed fracture of right temporal bone. On internal examination of brain, he found that the

brain matter is pale and intracranial heamotoma was seen on right temporal part of brain. The cause of death was due to haemorhagic shock due to

intracranial haemorhage due to head injury. He further stated that both the injuries were sufficient to cause the death. In the cross-examination, he

stated that, union of bones are not fused, including skull, at such tender age. He also stated that, if a male or female of such a tender age falls on

stone while running, such sort of injury could be possible. He further stated that if somebody scrub his hands and legs in a lying position, then

abrasions could be possible.

15. Besides that, the injury certificate of PW-1 issued by the Medical Officer, Silver Jubilee Hospital, Baramati, Dist. Pune, was admitted by the

defence and same was produced at Exh. 25. Moreover, blood sample of victim Dilshad was sent to the Chemical Analyzer office for examination

purpose Exh.31, result thereof was human blood of inconclusive nature. The blood sample of the accused was also sent to the Chemical

AnalyzerÃ¯Â¿Â½s office for examination purpose and the chemical analyzerÃ¯Â¿Â½s report Exh.32 discloses that the blood group of the accused is

Ã¯Â¿Â½OÃ¯Â¿Â½. Moreover, the seized articles were sent to the Chemical Analyzer for examination purpose along with the forwarding letter Exh.29 and

the report of the Chemical Analyzer Exh. 30 discloses that the said articles bore human blood of Ã¯Â¿Â½BÃ¯Â¿Â½ group, whereas article stone discloses

human blood but of inconclusive nature and also articles i.e. earth and small stones disclosed human blood but of inconclusive nature.

16. On the back ground of the aforesaid evidence, the learned counsel for the accused canvassed that the medical certificate Exh.25 pertaining to

PW-1 issued by the Medical Officer, Silver Jubilee Hospital, Baramati, Dist. Pune, discloses that all the injuries sustained by her are simple injuries

caused by hard and blunt object and the injuries sustained by her are C.L.W. and not incised wounds although allegations against the accused are

that he attacked on PW-1 Tahira by knife and, therefore, it is submitted that the medical certificate Exh. 25 and the allegations made against the

accused in respect on attack of PW-1 Tahira are not in tune with each other. He submitted that the medical evidence is not in consonance with the

injuries sustained by PW-1 Tahira. It is further argued by the learned counsel for the appellant that PW-2 Karishma i.e. the alleged eyewitness,

referred to axe in her deposition by which accused allegedly attacked on PW-1 Tahira and caused injuries to her and, therefore, the weapon

referred by her i.e. axe, is different from the weapon referred by PW-1 Tahira since she referred to weapon knife. It is also submitted that PW-2

Karishma admitted in her cross-examination that she was tutored by PW-1 Tahira i.e. her mother. It is also canvassed that it is unbelievable that

victim Dilshad was lying on stone as stated by PW-2 Karishma in her deposition. Accordingly, it is submitted that the testimony of PW-2

Karishma i.e. the alleged eye-witness is not in tune with PW-1 Tahira. Besides, it is submitted that PW-2 cannot be construed as eye-witness since

she has stated in her deposition that she was on Ã¯Â¿Â½ChhapparÃ¯Â¿Â½ and when accused threw stone on deceased Dilshad, she was outside the house.

Accordingly, it is submitted that the testimony of PW-2 cannot be of any avail to the case of the prosecution.

17. Besides, according to the learned counsel for the appellant, PW-1 does not say anything in her deposition about the assault by the accused

upon the victim Dilshad by stone and accordingly, it is submitted that there are variances in the testimony of eye-witnesses and prosecution has

failed to prove the charges levelled against the accused and, therefore, the learned counsel for the appellant urged that the present appeal be

allowed by quashing and setting aside the conviction and sentence imposed upon the accused and he be acquitted for the offences with which he is

charged.

18. Per contra, the learned A.P.P. opposed the present appeal vehemently by pointing out that the injury certificate Exh.25 pertaining to PW-1

issued by the Medical Officer, Silver Jubilee Hospital, Baramati, Dist. Pune, discloses that the injuries sustained by the said injured person were on

vital parts of the body, such as, mandible region and forehead although the said injuries were described as simple injuries. It is also canvassed by

learned A.P.P. that the testimonies of PW-1 Tahira and PW-2 Karishma and PW-7 Tayyab are the depositions of eye-witnesses who have

witnessed the occurrence of incident and the said eye-witness account connects the accused with the crime. Moreover, it is also submitted that it is

apparent from the testimony of PW-8 Dr. Mahesh Jagtap and postmortem notes Exh.24 that the victim Dilshad met with homicidal death and the

accused herein is the cause of the said death. Moreover, it is also further submitted that the external injuries disclosed in Clause 17 of postmortem

notes and internal injuries disclosed in Clause 19 co-relate with each which are in consonance with the cause of death of the victim. Accordingly,

the learned A.P.P. asserted that the ocular, documentary and medical evidence adduced/produced by the prosecution establishes the nexus

between the accused and the crime. Moreover, it is submitted by the learned A.P.P. that there is no glaring mistake in the impugned judgment and

order of conviction, and accordingly, the learned A.P.P. supported the said judgment and order and submitted that present appeal bears no

substance and, therefore, urged that it be dismissed.

19. We have perused the ocular, documentary as well as medical evidence adduced/produced by the prosecution carefully as well as considered

the submissions advanced by the learned counsel for the parties anxiously and at the outset there cannot be any dispute that the victim Dilshad met

with homicidal death and the testimony of PW-8 Dr.Mahesh Jagtap and the postmortem notes Exh. 24 clarify that the cause of death of victim

Dilshad was due to haemorhagic shock due to intracranial haemorhage due to head injury and both the external injuries sustained by her as

specified in Col. 17 of the postmortem notes are sufficient to cause death. True it is that PW-8 Dr. Mahesh Jagtap admitted in the cross-

examination that if the male or female of such tender age i.e. 10 years, falls on the stone while running, such sort of injury could be possible, but

such is not the defence of the accused in his statement recorded u/s 313 of the Criminal Procedure Code and even the said defence was not put to

the eye-witnesses through their respective cross-examinations. Apart from that, the fact remains that the medical evidence adduced/produced by

the prosecution through the testimony of PW-8 Dr. Mahesh Jagtap and postmortem notes Exh. 24 clarifies that victim Dilshad met with homicidal

death.

20. The testimonies of PW-1 Tahira, PW-2 Karishma and PW-7 Tayyab is the direct evidence on eye-witness account in respect of both the

offences alleged against the accused herein. As regards the assault upon PW-1 Tahira by the accused by knife, she has narrated the occurrence of

the incident elaborately and since she herself is the victim of assault, her evidence inspires the confidence which is acceptable as trustworthy and

reliable evidence to connect the accused with the alleged crime. As regards the evidence of PW-1 Tahira in respect of causing death of daughter

Dilshad by accused, she has categorically stated that the accused caused to fell down his daughter Dilshad on Ã¯Â¿Â½OtiÃ¯Â¿Â½ portion of his house and,

therefore, she suffered head injury and died on the spot and the said version of PW-1 has not been shaken in the cross-examination and, therefore,

the same is required to be accepted, to connect the accused with the crime.

21. The testimony of PW-2 Karishma, who is the child witness also reflects the narration of the occurrence of the incident that the accused threw

stone on her sister Dilshad, since she had accompanied with victim Dilshad while returning from the school on the date of occurrence of the

incident. Moreover, the evidence of PW-7 Tayyab i.e. the brother of victim Dilshad wherein he stated that his father i.e. the accused caused to fell

down her sister Dilshad and thereafter threw a stone on her head due to which she died. However, the testimonies of both the said witnesses i.e.

PW-2 Karishma and PW-7 Tayyab disclose that they have categorically admitted that their mother i.e. PW-1 Tahira has tutored them in respect

of deposition to be given before the Court. Moreover, PW-2 Karishma was on Ã¯Â¿Â½ChhapparÃ¯Â¿Â½ at the crucial time and PW-7 Tayyab came after

half an hour after arrival of victim Dilshad, and therefore, suspicion is raised about witnessing the incident by them. Hence, the eyewitness account

which was given by PW-2 Karishma and PW-7 Tayyab deserves to be discarded and both the said testimonies cannot be construed as reliable

and trustworthy to connect the accused with the crime.

22. Having considered the said eye-witness account of the testimonies of PW-1 Tahira, PW-2 Karishma and PW-7 Tayyab, the testimony of

PW-1 Tahira is the sterling evidence which connects the accused with the crime clinchingly as the culprit and cause of the death of deceased

Dilshad and, therefore, the minor discrepancies therein do not impeach its credibility and hence, the said direct evidence of eye-witness account is

required to be accepted, and consequently, same is required to be believed.

23. Now the question arises that, which offences have been made out by the prosecution against the accused and having taken the survey of

ocular, documentary and medical evidence adduced/produced by the prosecution, the fact remains that victim Dilshad met with homicidal death

and it is evident from the record that it was not the suicidal or accidental death, since in fact, the accused is the cause of the death. However,

having the comprehensive view of the matter, and more particularly, considering the medical evidence and injuries sustained by the victim, we are

of the considered view that the accused had no intention of causing death of victim Dilshad or to cause such bodily injury as is likely to cause death

but knowledge can be attributed to him that the injury caused by him to victim was likely to cause death and, therefore, the accused has committed

culpable homicide not amounting to murder and the prosecution has made out the case against the accused for the offence punishable u/s 304 (Part

II) of Indian Penal Code and hence, the conviction and sentence imposed upon him for the offence punishable u/s 302 of Indian Penal Code

deserves to be quashed and set aside and the accused shall have to be convicted u/s 304 (Part II) of Indian Penal Code and considering the date

of incident i.e. 7.7.2005 and his arrest on 8.7.2005 and the sentence undergone by him, we deem it fit to impose seven years rigorous

imprisonment upon him therefor and fine of Rs. 1000/- and in default of payment of fine to suffer further rigorous imprisonment for three months,

which would meet the ends of justice.

24. As regards the offence committed by the accused alleged u/s 307 of Indian Penal Code, it is crystal clear that there is variance in the testimony

of PW-1 Tahira in respect of the alleged assault by the accused upon her by knife on one hand, and her injury certificate Exh.25 on the other hand,

as discussed herein above, but the fact remains that PW-1 Tahira sustained injuries as reflected in injury certificate Exh. 25, by hard and blunt

object/weapon, perhaps by the blunt side of the knife and said injuries are simple in nature, as stated in injury certificate Exh. 25. Having

comprehensive view of the matter, we are of the considered opinion that the intention or knowledge u/s 307 of Indian Penal Code cannot be

attributed towards the accused, and hence, the conviction and sentence imposed upon him for the offence punishable u/s 307 of Indian Penal

Code, shall not sustain and same deserves to be quashed and set aside, and instead, the accused shall have to be convicted for the offence

punishable u/s 324 of Indian Penal Code and necessary sentence is required to be imposed upon him and imposition of two years rigorous

imprisonment and fine of Rs. 1000/-, and in default of payment of fine, further rigorous imprisonment for three months would be appropriate.

Needless to say, both the aforesaid substantive sentences are required to be directed to run concurrently.

25. Hence, the following order is passed:-

The present appeal is partly allowed and conviction and sentence imposed upon the appellant i.e. the accused for the offence punishable u/s 302 of

Indian Penal Code stands quashed and set aside and instead he is convicted for the offence punishable u/s 304 (Part II) of Indian Penal Code and

sentenced to suffer R.I. for seven years and to pay fine of Rs. 1000/-, in default to suffer further R.I. for three months and also the conviction and

sentence inflicted upon the appellant i.e. the accused for the offence punishable u/s 307 of Indian Penal Code also stands quashed and set aside

and instead he is convicted for the offence punishable u/s 324 of Indian Penal Code and sentenced to suffer rigorous imprisonment for two years

and to pay fine of Rs. 1000/-, in default of payment of fine to suffer further R.I. for three months and the aforesaid substantive sentences to run

concurrently and the order of disposal of Muddemal property stands maintained.

26. The appeal is disposed of accordingly.