

(1983) 10 AP CK 0001

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 127 of 1981

Bandela Nagaraju and Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 04-10-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313

Evidence Act, 1872 — Section 6

Penal Code, 1860 (IPC) — Section 148, 149, 324, 34

Citation : (1984) 1 APLJ 39 : (1984) 2 RCR(Criminal) 114

Hon'ble Judges : Sardar Ali Khan, J; Jayachandra Reddy, J

Bench : Division Bench

Advocate : T. Bali Reddy, P. Innayya Reddy and T. Venugopal Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Jayachandra Reddy, J.>

1. All the six accused in S.C. No. 29/1980 on the file of the learned Sessions Judge, Nellore are the appellants. They are found guilty u/s 148 I.P.C. and each of them is sentenced to undergo two years rigorous imprisonment. They are also convicted u/s 302 read with Section 149 I.P.C. and each of them is sentenced to undergo imprisonment for life. A-1 is further convicted u/s 324, I.P.C. and sentenced to suffer one year rigorous imprisonment.

2. The prosecution case is as follows. All the six accused and the material witnesses in the case are the residents of Nellore town. One Ingilala Suresh Kumar, hereinafter referred to as the deceased, is a resident of Rayapu Malawada, Nellore town and he was working as an employee in Radha-Madhav theatre. P.W. 3 and one Chitti Babu are his brothers. There have been misunderstandings between the accused on one hand and the deceased and his brothers on the other. About one and half years prior to the occurrence, one Navakoti Sukumar, an associate of A-1 was murdered and Chitti Babu, the brother of the deceased and the deceased figured as accused, but the case

ended in acquittal. About four years ago, A-1, A-4 and Sukumar, the deceased in the other case filed a case against the deceased in this case and that case also ended in acquittal. One year prior to the present occurrence, A-2 stabbed P.W. 3 and in that connection, a case was filed in the court of the Second Additional Judicial First Class Magistrate, Nellore and the same is pending trial. Because of the acquittal of the deceased in the other two cases, the accused bore grudge against him and they were waiting for an opportunity to do away with the deceased.

3. One Gangapatnam Dayakar was working as a clerk under a Kerala Arrack contractor in the depot situated to the east of Atmakur bus stand. P.W. 1, at the relevant time, was working as a cooly at the Railway Goods shed and the lorry stand and he was a friend of the deceased. Both of them used to visit the arrack shop of Dayakar to consume arrack. On 16-12-1979 at about 11-30 p.m. the deceased and P.W. 1 went to the arrack shop and sat on a bench and asked Dayakar to serve arrack. Just then A-1 to A-6, having formed themselves into an unlawful assembly, entered the arrack shop. A-1 was armed with an axe and A-2 to A-6 were armed with knives and iron rods. Having entered their shop, A-1 shouted saying that the deceased cannot escape the death. So saying, he hacked the deceased with the axe on his chin. The deceased fell down from the bench. Thereafter A-2 to A-6 stabbed the deceased and also beat him indiscriminately all over the body with knives and iron rods. The deceased died on the spot. P.W. 2 who is a licensed cooly of the Road Transport Corporation at Atmakur bus stand also proceeded to the shop of Dayakar to consume arrack. On the way he stooped for urination and when he got up, he saw the accused entering the arrack shop. Then he went near the shop and peeped through a hole in the thatty on the southern side of the arrack shop and witnessed the occurrence. Thus P.Ws. 1 and 2 and Dayakar witnessed the occurrence. As the accused were stabbing the deceased, P.W. 1 questioned the accused about their highhanded act and A-1 took a knife from one of his associates and stabbed P.W. 1 with the knife on the left wrist of P.W. 1. Thereafter, the accused ran away. Seeing the occurrence, Dayakar in whose shop the deceased was stabbed to death stayed for some time and then went to No. 2 Town police station and presented a report Ex. P-9 to the Head Constable P.W. 9 at about 1 a.m. P.W. 9 registered the crime and issued express F.I.Rs. The Inspector of Police, City Crime Station, Nellore P.W. 11 received the F.I.R. and took up the investigation. On 17-12-1979 at about 7 a.m. P.W. 11 inspected the scene of offence, seized the bloodstained earth from the place of occurrence and held the inquest. During the inquest, he examined P.Ws. 1 to 3 and Dayakar. The dead body was sent for post-mortem examination. P.W. 6 conducted post-mortem examination and he found as many as thirty injuries. Out of them, four are lacerated injuries and two are contusions and the rest are all incised injuries. On internal examination, the Doctor found incised injuries on the heart and on the lungs. He also found that the trachea was cut and other vital organs were also injured. He opined that the injuries to the heart as well as the injuries to the other vital organs were necessarily fatal

and they could have been caused by a sharp edged weapon like a knife, dagger, spear or an axe and some of the injuries could have been caused by an iron rod. Subsequently, the accused were arrested and after completion of the investigation, the charge-sheet was laid.

4. The prosecution in support of its case examined twelve witnesses. Out of them, P.Ws. 1 and 2 figured as eye-witnesses. The prosecution could not examine Dayakar as it was reported that he was dead. The statements of some of the witnesses were recorded by the Judicial First Class Magistrate u/s 164 Cr.P.C. When examined under S. 313 Cr.P.C. the accused denied the offence and pleaded not guilty. A-3 in particular pleaded alibi and stated that on the day of the occurrence, he was not at Nellore and that on the other hand, he was at Waltair and he left Waltair on 16-12-1979 by Tata-Madras express which left Waltair at 3 p.m. According to him, on the intervening night of 16/17-12-1979 he was travelling in the train. In support of his plea, he examined D.Ws. 1 and 2. We shall advert to their evidence at a later stage. The learned Sessions Judge was not prepared to accept the plea of alibi of A-3. He relied on the evidence of P.Ws. 1 and 2 and convicted all the accused.

5. The learned counsel for the appellants submits that the evidence of P.Ws. 1 and 2 is unreliable and their conduct in not informing anybody immediately after the occurrence throws any amount of suspicion on their evidence. It is also his submission that D.Ws. 1 and 2 are independent witnesses and there is no reason as to why their evidence should be rejected. The learned Counsel further submits that so far as the part played by A-1 is concerned, the medical evidence also does not support the prosecution case. Before we consider these submissions individually, it becomes necessary to refer to the evidence of the eye-witnesses P.Ws. 1 and 2. P.W. 1 is an injured witness. He deposed that he is a resident of Kamativaripalem, Nawabpet, Nellore and has been working as a coolie at the Railway Goods shed and also at the lorry stand. He knew the deceased who lives nearby his house. The deceased was working as a casual labourer in Radha-Madhav theatre. Both of them, after finishing their work, used to go to the arrack shop of Dayakar to consume arrack every night. On 16-12-1979 the deceased came to P.W. 1 at about 11-30 p.m. to the lorry stand and both of them proceeded to the arrack shop of Dayakar. There was a petromax light inside the arrack shop and Dayakar was present in the shop. P.W. 1 and the deceased sat on a Bench and requested Dayakar to supply them arrack. Just then all the six accused armed with axes, knives and iron rods entered the arrack shop. P.W. 1 further deposed that on seeing them, he was afraid and changed his seat on the bench. A-1 who was armed with an axe came near the deceased and asked him to get up and so saying, he cut him with an axe on the chin. After receipt of this injury, the deceased fell down on his back. Then A-2 stabbed him with a knife on the left chest and right hand indiscriminately. A-2 to A-6 also stabbed and beat the deceased indiscriminately with knives and iron rods. P.W. 1 also deposed that when he remonstrated as to why so many of them were beating the deceased, A-1 pulled out a knife from one of his associates and tried to stab him on the

stomach and when P.W. 1 tried to ward off the blow, his left wrist was injured and there was bleeding. The accused thereafter left the place of occurrence. P.W. 1 ran to his house and because of severe pain, he was not in a position to tell anything and at about 4-30 or 5 a.m. a police van came and he was taken to the police station and then to the hospital. P.W. 5, the Doctor on duty, examined P.W. 1 for his injury at 5-30 a.m. on 17-12-1979 and found an incised wound 1" x 1/2" x 1/4" on the forearm. P.W. 1 further deposed that he was examined during the inquest by the Circle Inspector of Police. He was cross-examined at length. P.W. 1 stated that he cannot say how many other coolies were with him when the deceased came to him. He also stated that he knew all the accused because they are all rowdies. It is elicited in his cross-examination that the arrack shop is of square shape of 10 feet. In a general way, he admitted that he could not say who among the accused were armed with knives or iron rods. He was confronted with his 164, Cr.P.C. statement wherein he did not give the details of the specific overt acts of A-4 to A-6. We think this omission is not of much consequence. P.W. 1, however, admitted that it did not strike to him that he should go and report at Nawabpet police station. He also admitted that he did not go to the house of the deceased and inform his people about the incident and till he was examined at the inquest, he did not tell anybody about the occurrence. So far as the evidence of P.W. 1 is concerned, we have no doubt whatsoever about his presence at the scene of occurrence. It cannot be said that the injury found by the Doctor is a self-inflicted injury. The occurrence itself is said to have taken place at about 11-30 p.m. and he was examined by the Doctor at 5-30 a.m. At the earliest moment when he was examined during the, inquest, he stated that he was stabbed by A-1. Inasmuch as no omission is elicited in his cross-examination in this regard, it therefore becomes clear that even at the earliest moment when he was examined by the police, he has stated that he was stabbed by A-1. That apart, even in the wound certificate that was issued by the Doctor P.W. 5 at about 5.30 a.m. it is noted that the injury was caused by a knife due to an assault. Therefore, there cannot be any doubt whatsoever that P.W. 1 received that injury in the arrack shop in the manner stated by him and that establishes his presence during the occurrence in the arrack shop when the deceased was done to death. Yet one infirmity which we noticed in his evidence is his conduct in not telling anybody about the occurrence immediately. This by itself is not a ground to reject his evidence. We must also bear in mind that the occurrence has taken place around mid-night and having witnessed a ghastly crime, he must have had a shock and at that hour and in that confusion, he might not have been in a position to go round and tell the relations of the deceased about the occurrence or go to the police station immediately to lodge a report. It may also be for the reason that the owner of the arrack shop also witnessed the occurrence and P.W. 1 might not have felt the necessity of going himself to the police station inasmuch as it was mainly the duty of arrack shop owner to go and inform the police. The fact, however, remains that he did not inform others about the occurrence or go to the police station immediately to lodge a report. For that reason, we think it is rather not safe to rely entirely on his evidence to convict

the accused without corroboration.

6. No doubt there is another eye-witness namely P.W. 2 on whose evidence the prosecution has placed considerable reliance. P.W. 2 has deposed that he is a resident of Nellore and he knew the deceased, P.W. 1 and also the accused. He also used to go to Dayakar's arrack shop for consuming arrack. On the day of the occurrence at about 11-30 p.m. he was proceeding to the arrack shop. On the way he went to a lavatory to urinate and as he got up and was adjusting his pant, he saw all the six accused entering the arrack shop. He also went to the shop and he witnessed the occurrence from outside through a hole in a thatty. It is in the evidence of P.W. 2 as well as the mediator P.W. 4 that there is a thatty with holes here and there. Therefore, it was possible for P.W. 2 to witness the occurrence. He has stated the details of the occurrence in his chief-examination just like P.W. 1. He was examined during the inquest. In cross-examination he admitted that during his duty hours, if he has to go to lunch, he has to inform his maistry. On the day of the occurrence, he admitted that he took his lunch at 12 noon and he was staying at the bus-stand. It was also elicited that on that day, he alone stayed at the bus-stand. So far-as the occurrence is concerned, nothing significant has been elicited in his cross-examination except the omission in his 164 Cr.P.C. statement namely that he did not state there that A-1 wrested a weapon from the other accused when he tried to stab P.W. 1. This omission is not very material. But in his evidence also, we noticed the same infirmity namely he did not inform the others about the occurrence. P.W. 2 stated that on the next day at the time of the inquest, he came to the bus stand and noticing the police, he went there and he was also examined. The learned counsel no doubt points out that in the cross-examination P.W. 2 admits that he did not go to the bus stand on the next day. This contradiction is only with reference to his going to bus stand and not with reference to his going to the place where the inquest was being held. It is true as contended by the learned counsel for the appellants that P.W. 2's conduct in not informing anybody is somewhat unnatural. But, in our view, that by itself is not a ground to reject his evidence in its entirety. It is a matter of common knowledge that sometimes the witnesses will be afraid of the accused and in this case, the evidence of this witness is to the effect that all the accused are rowdies. However, by way of abundant caution, the courts do seek corroboration to the evidence of witnesses who having witnessed the occurrence do not go and inform the police or the relations of the deceased at the earliest possible time. The learned Sessions Judge, however, believed the evidence of P.Ws. 1 and 2 and convicted the accused. But because of the conduct of P.Ws. 1 and 2 in not informing the others or giving a report to the police about the occurrence at the earliest point of time, we think it is necessary to accept their evidence to the extent corroborated by the other evidence on record.

7. As already mentioned, the prosecution examined only P.Ws. 1 and 2 as eye-witnesses. P.W. 3 is the brother of the deceased. He only deposed that he came to know about the occurrence and went to the place of occurrence. He also deposed about the earlier incidents. P.W. 4 is the mediator and the other

witnesses are not material so far as the actual occurrence is concerned. Now we are left with Ex. P-9, the report given by Dayakar, the owner of the arrack shop. It is submitted by the learned defence counsel that Ex. P-9 is inadmissible and therefore no reliance can be placed on the same even for the purpose of using it to corroborate the evidence of P.Ws. 1 and 2. We shall presently examine whether Ex. P-9 is admissible and if so, to what extent it can be acted upon. The evidence of P. Ws. 1 and 2 as well as the other evidence on record establish that Dayakar was running the arrack shop. It is also not in dispute that the deceased was stabbed to death in the arrack shop of Dayakar. About the time of occurrence also, there cannot be any doubt. P.W. 9, the Head Constable of No. 2 Town Police Station deposed that on 17-12-1979 at about 0-45 hours a person by name Dayakar came to the police station and informed him that the deceased was murdered in his arrack shop and presented a report and that is Ex. P-9. On the basis of that report, he registered a crime and issued F.I.Rs. P.W. 10, the Sub-Inspector of Police, who also investigated into the case deposed after being recalled that the father of Dayakar gave a written statement on 20-2-1980 that Dayakar died on 14-2-1980 due to heart disease and the same was marked as Ex. P-14. In the further cross-examination P.W. 10 admitted that he did not record the statement of the father of Dayakar and that he has not seen the dead body of Dayakar. The learned defence counsel submits that there is no positive proof whatsoever that Dayakar is dead and without examining him as a witness, no reliance can be placed on Ex. P-9 inasmuch as the same, at the most, amounts to previous statement of Dayakar which can be used either for corroboration or for contradiction of the testimony of Dayakar only if he had been examined. After a careful examination of the evidence of P.W. 10 and the surrounding circumstances we are satisfied that the prosecution could not examine Dayakar for some reason or the other and there is no reason to disbelieve the evidence of P.W. 10 when he states that the father of Dayakar came to him and gave a statement that Dayakar was dead. Therefore the fact remains that Dayakar could not have been examined. In these circumstances, the question is whether Ex. P-9 can be admitted in evidence and if so, to what extent it can be used. Section 6 of the Evidence Act lays down that facts, which though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places. Illustration (a) under the above Section reads thus -

"A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact."

The scope of this Section has been examined by various High Courts and also by the Supreme Court. *Sawal Das Vs. State of Bihar*, is a case where the deceased was pushed into a room and is alleged to have been killed inside the room. The only evidence given as to what could have taken place inside the room was with regard to the cries "Bachao, Bachao" of the victim. These cries were heard by

people who were standing outside including the children of the deceased. Their Lordships while considering the question whether the evidence of the bystanders as to the cries of the children is admissible held that the evidence of these witnesses about what the children said or did at that time is admissible u/s 6 of the Evidence Act. In *Rex v. Christie* 1914 AC 545 it was laid down that there cannot be any fixed limit of time and each case must depend upon its own circumstances and a circumstance subsequent to the act may be admissible if it is a part of it and not a mere report of the past occurrence. In this case their Lordships considered the decisions in *Bedingfield* case (1879) 14 Cox CC 341 and recorded a dissenting note observing that the view taken in *Bedingfield* case namely that any thing said or done after the transaction being over is inadmissible is rather extreme and that in other cases, the above Rule was applied with less strictness. In *Wigmore's Treatise on the Anglo-American System of Evidence in Trials at Common Law* (Third Edition - Volume 6) a passage at page 1756 runs thus -

"Thus, if after the occupation of land has ceased, the former occupant declares 'The land was mine, for I had a deed of it,' this utterance, not having been made during occupation, leaves the act of occupation as equivocal and indefinite as before, and has therefore no significance as a verbal act; its only possible use could be as an ordinary hearsay assertion, and as such it is inadmissible. But under the present Exception an utterance is, by hypothesis, offered as an assertion to evidence the fact asserted (for example, that a car-brake was set or not set), and the only condition is that it shall have been made spontaneously, i.e. as the natural effusion of a state of excitement. Now this state of excitement may well continue to exist after the exciting fact has ended. The declaration, therefore, may be admissible even though subsequent to the occurrence, provided it is near enough in time to allow the assumption that the exciting influence continued."

It is therefore an error to apply to the Present Exception the Verbal Act rule that the utterance must be precisely contemporaneous with the act or occurrence. There was in the beginning a tendency to commit this error. But at the present day this error seems to have been almost everywhere repudiated."

In *Sarkar's Law of Evidence*. (13th Edition, page 69) the learned author, after referring to the various decisions, summarised the law governing the admissibility of declarations accompanying acts as follows -

(1) The declarations must relate to the act which is in issue or relevant thereto, they are not admissible merely because they accompany an act. Moreover, the declarations must relate to and explain the fact they accompany, and not independent facts previous or subsequent thereto unless such facts are part of the transaction which is continuous.

(2) The declarations must be substantially contemporaneous with the fact and not merely the narrative of a past event.

(3) The declaration and the act may be by the same person, or they may be by different persons, e.g. the declarations of the victim, assailant and by-standers (See Illustration (a)).

(4) Though admissible to explain or corroborate, or to understand the significance of the act, declarations are not evidence of the truth of the matters stated.

Bearing these principles in mind, we shall examine the facts in the present case for a consideration whether Ex. P-9 is admissible or can be acted upon. The words used in Illustration (a) u/s 6 of the Evidence Act includes all the persons who were present at the time of the incident. Therefore, as Dayakar was present at the time of the occurrence, he comes under the above category of persons. The next test that has to be applied is whether the statement given by Dayakar is so connected with the facts in issue as to form part of the same transaction. In this context, the submission of the learned defence counsel is that Dayakar did not give the statement immediately and therefore, it cannot be said to be contemporaneous and that on the other hand, he waited for some time namely for one hour and then went to the police station and gave report Ex. P-9. P.W. 9 deposed that Dayakar came to him at 0-45 hours i.e. after an hour and fifteen minutes of the occurrence. The question is whether because of this lapse of time, can Ex. P-9 be said to be not contemporaneous. As observed by the learned author Wigmore, the declaration made subsequent to the occurrence is admissible provided it can be validly assumed that the exciting influence continued. In this context the surrounding circumstances in the instant case that are to be examined are that Dayakar was the owner of the arrack shop where the ghastly crime had taken place and the occurrence took place at about midnight time and there must have been a reasonable apprehension in his mind that if he goes out, he may be attacked by the assailants and, therefore, being under shock and excitement, it could not have been possible for him to rush to the police station immediately which is at a distance. What the courts have to see in such a case is whether there was scope to allow fabrication. In other words, the conditions for admissibility of such a statement are the proximity of time, the proximity of the police station and the continuity of action. In *Mahendra Vs. The State of Madhya Pradesh*, it was held that a transaction may be a single incident occupying a few minutes or may be spread over to a variety of facts etc. occupying a such longer time and occurring on different occasions or at different places. It can therefore be seen that while examining whether the declaration is connected with the fact in issue so as to form part of the same transaction, all the surrounding circumstances obtaining in each case have to be taken into consideration. In the instant case, we are satisfied that the conduct of Dayakar in not immediately rushing to the police station does not give room for the assumption that his declaration was not contemporaneous or that the interval was such as to allow fabrication. The learned defence counsel however submits that in Ex. P-9 Dayakar has not only given the details of the occurrence but also made a mention about the motive aspect and, therefore according to the learned

counsel some extraneous matter was also brought into the declaration and this necessarily leads to the inference that the time was utilised for bringing into existence a detailed statement which, in other words, amounts to hearsay evidence. We see no force in this submission. Dayakar was not a stranger to the accused or the deceased. He had knowledge about their previous enmity. Therefore, incidentally he has referred to the same in Ex. P-9. That by itself does not detract the value of Ex. P-9 and render it inadmissible. For all these reasons, we hold that the statement of Dayakar as contained in Ex. P-9 satisfies the requirements of Section 6 of the Evidence Act and therefore it is admissible.

8. The next question is whether the same can be acted upon in concluding the guilt of the accused. As we have already held, we are not rejecting the evidence of P.Ws. 1 and 2 on the ground that their conduct was somewhat unnatural. We only wanted to find some corroboration as a rule of prudence to their evidence. In this view of the matter, we shall examine the contents of Ex. P-9 and see to what extent, the evidence of P.Ws. 1 and 2 is corroborated by Ex. P-9. In Ex. P-9 it is mentioned that on 16-12-1979 at about 11-30 p.m. when Dayakar was in the arrack shop, the deceased and P.W. 1 came and asked him to serve arrack. It is then A-1, A-2 and three others came armed with weapons. Among them, A-1 was armed with an axe. He beat the deceased with the axe on the chin and the deceased fell down. Immediately A-2 stabbed the deceased indiscriminately and other three persons whose names are not mentioned also stabbed the deceased. It is also mentioned that A-1 stabbed P.W. 1 on the left hand with a knife. Ex. P-9 and the F.I.R. reached the Magistrate on that very morning by about 5-15 a.m. Therefore, there was no delay and as already held, there was no scope for anybody to contact Dayakar and make him to give a report. The version in Ex. P-9 appears to us to be a spontaneous one and inspires confidence. However, in Ex. P-9 the names of the other assailants are not mentioned. To that extent, it does not corroborate the evidence of P.Ws. 1 and 2. Further the presence of P.W. 1 and his receiving injuries at the hands of A-1 is also mentioned in Ex. P-9. Therefore, the evidence of P.W. 1 in this regard also received corroboration from Ex. P-9. In view of the fact that the names of A-3 to A-6 are not mentioned in Ex. P-9, we think it is not safe to confirm their convictions relying on the evidence of P.Ws. 1 and 2 alone. Since we are giving the benefit of doubt to A-3, it is not necessary to go into the evidence of D.Ws. 1 and 2. So far as A-1 and A-2 are concerned, the evidence of P.Ws. 1 and 2 is amply corroborated by Ex. P-9.

9. The learned counsel, however, submits that so far as the part played by A-1 is concerned, the prosecution case, however, does not receive support from the medical evidence. P.Ws. 1 and 2 deposed that A-1 beat the deceased with an axe on the chin. In Ex. P-9 also it is mentioned likewise. The Doctor P.W. 6 who conducted the post mortem examination stated in his chief examination that the injuries could be caused by any sharp edged weapon like a dagger, spear or an axe, whereas in the cross-examination in a general way, he admitted that the incised injury could be caused by a spear or knife, but that cannot be caused by

an axe. He also admitted that injury No. 1 is an incised injury and cannot be caused by an axe. Relying on this admission, the learned defence counsel submits that the overt act attributed to A-1 is not corroborated by the medical evidence. We are unable to agree. We do not find any evidence as to the size of the axe. P.W. 6 in the re-examination, however, stated that when an axe is wielded on the injured, there is every possibility of his drawing his head backwards and sideways and if the width of the instrument is less than 3 c.m. and it is a blade like object and if it is thrust, it could cause injury No. 1. It can therefore be seen that the medical evidence is in no way conflict with the oral evidence or the contents of Ex. P-9.

10. In the result, the conviction of A-1 and A-2 u/s 302 read with Section 149 I.P.C. is altered to one u/s 302 read with Section 34 I.P.C. and each of them is sentenced to undergo imprisonment for life. A-1's conviction u/s 324 I.P.C. and the sentence of one year rigorous imprisonment awarded to him thereunder by the lower court are confirmed. The sentences shall run concurrently. The convictions and the sentences of A-3 to A-6 are set aside and they are acquitted of all the charges and they shall be set at liberty. Since we are acquitting A-3 to A-6 of all the charges including the one u/s 148 I.P.C. the convictions of A-1 and A-2 u/s 148 I.P.C. and the sentences of two years, rigorous imprisonment awarded to each of them thereunder are also set aside.

11. The appeal is allowed so far as A-3 to A-6 are concerned and dismissed as against A-1 and A-2.

12. Appeal partly allowed.