
(1995) 03 AP CK 0022

In the Andhra Pradesh High Court

Case No : Criminal Appeal No's. 381 and 981 of 1994

Kalthuri Mallikarjuna and Another

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 01-03-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162
Evidence Act, 1872 — Section 60
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 34

Citation : (1995) CriLJ 3100

Hon'ble Judges : M.N. Rao, J; Krishna Saran Shrivastav, J

Bench : Division Bench

Advocate : K.G. Kannabiran, B. Nalin Kumar, P.A. Kamaleswari and Padma, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Krishna Saran Shrivastav, J.—This judgment shall also dispose of Criminal Appeal No. 981 of 1994 as also Criminal Revision No. 769 of 1994 because they arise out of the same judgment passed by the Sessions Judge at Nellore in Sessions Case No. 147 of 1992, whereby the accused appellants A-1 and A-2 have been convicted.

2. Nine persons have been prosecuted under Sections 148 and 302 read with Sections 34 and 149 of the Indian Penal Code for committing the murder of Kavali Madhusudhan. Charges under Sections 148 and 302 read with Sections 34 and 149 of the Indian Penal Code were framed against all the accused persons. The Sessions Judge convicted A-1 and A-2 u/s 302 of the Indian Penal Code and sentenced each of them to suffer imprisonment for life, but acquitted there of the remaining charges levelled against them. The remaining accused persons, A-3 to A-9 were also acquitted of all the charges levelled against them.

3. Feeling aggrieved by the judgment of conviction and sentence, A-1 and A-2 have preferred Criminal Appeal No. 381 of 1994. The State has also preferred Criminal Appeal No. 981 of 1994 against the judgment of acquittal of A-3 to A-9.

The complainant also filed Criminal Revision No. 769 of 1994 against the judgment of acquittal of A-3 to A-9.

4. It is no longer in dispute before us that there is evidence on record also that in village Kanuparthipadu there were two warring factions, one led by Chandi Venkataramaiah and the other by Puli Sreeramulu PW-1. There has been criminal litigations between these factions. Dara Polaiah PW-2 and Bakkamunthala Ravi PW-3 belong to the faction led by Puli Sreeramulu PW-1, while the accused belong to the faction led by Chandi Venkataramaiah.

4A. Put briefly, the case of the prosecution is that on 16-1-1991 the deceased boarded the town bus No. 31 bearing registration No. ATN 1467 in Nellore for going to his village Kanuparthipadu at about 6.30 P.M. P. John Vijayakumar PW-6 was the driver of the bus, while Vandati Venkatachalm PW-7 was its conductor. Puli Sreeramulu PW-1, Dara Polaiah PW-2, Bakkamunthala Ravi PW-3, Bandla Munaiah PW-4 and Visanaka Sivakumar Reddy PW-5 also boarded the bus at Nellore for going back to their village Kanuparthipadu. The deceased-Kavali Madhusudhan was occupying the third rear seat of the passenger bus, while Dara Polaiah PW-2 and Bakkamunthala Ravi PW-3 were occupying the seat just behind the seat of the deceased - Kavali Madhusudhan. When the bus reached near the garden fencing of Muddu Krishnareddy Rice Mill, after crossing the Anikapalli road junction, at about 7.30 P.M., the accused A-1 to A-9 who were lying in wait for the bus suddenly surrounded the bus armed with various weapons. A-7 to A-9 stood in front of the bus and stopped it. At that time A-1 to A-3, A-6 and A-7 were armed with spears, A-4 and A-5 were armed with axes, A-8 was armed with knife and A-9 was armed with Gorasa Kathi. A-1 and A-2 entered the bus through the front door, while A-3 to A-6 stood at the rear entrance of the bus. A-1 and A-2 went near the seat of the deceased Kavali Madhusudhan and they turn by turn stabbed by means of their spears on his neck. They dragged the deceased Kavali Madhusudhan out side the bus through its rear door and, with the aid of the remaining accused persons, dragged his body and then lifted it and took it towards the northern side to a vacant field.

5. They beat the injured Kavali Madhusudhan indiscriminately with their weapons and threw the dead body in the vacant field and fled away. Puli Sreeramulu PW-1 and Dara Polaiah PW-2 went in search of the dead body with Puli Subramanyam and found the dead body of Madhusudhan in torchlight. Puli Sreeramulu PW-1 dictated the written report to Dara Venkataramaiah PW-14 and submitted the written report Ex. P-1 in Nellore Rural Police Station in the mid night at about 12.30 A.M., on the same day. On the basis of the written report Ex. P-1, Head Constable Mohd. Hanif PW-16 registered the offence under Sections 147, 148 and 302 read with Section 149 of the Indian Penal Code vide first information report Ex. P-18.

6. On 16-1-1991 at about 9.45 P.M., D.V.S.S. Murthy PW-17, Inspector of Police, Nellore Rural, on receiving vague information about the murder near the village Kanuparthipadu, went there with his staff and reached there about 10.30 P.M. He

located the dead body of Madhusudhan lying with multiple injuries on the vacant land of Pallamreddy Mastanreddy but in spite of interrogation he could not get any information about the incident. He returned to Nellore Rural Police Station at about 1.00 A.M., and at about 1.15 A.M., he received a copy of F.I.R. Ex. P-18 from the Head Constable Syed Mohd. Haneef PW-16. He again started for the village Kanaparthipadu at 2.30 A.M., and reached there at 3.15 A.M. He recorded the statement of witnesses. From 7.00 A.M. to 8.45 A.M., on 17-1-1991 he prepared mahazar, Ex. P-16, seized the spear M.O.I with its broken tip and certain articles of the deceased - Madhusuhan. He also seized the bloodstained earth from the place where the dead body of Madhusudhan was lying up to the relevant place of the road which goes from Nellore to Kanaparthipadu. He prepared rough sketch of scene Ex. P-19. He prepared the inquest report and sent the dead body for postmortem examination. He had also found blood-stains on the rear entry of the bus bearing No. ATN 1467, on the rear third seat of the bus and seized the scrappings of the blood-stained portions. He also prepared the observations report.

7. Lady doctor B. Rajeswari PW9 conducted autopsy on the dead body of Madhusudhan on 17-1-1991 and found an incised wound 2" x 6" x 1" on the left supra clavicular region and nine abrasions each 1/2" x 1/2" on the right shoulder joint as also fourteen abrasions on other parts of the dead body. On internal examination, she found incised wound on the left side of plura, incised wound on the pericardium, incised wound 2" on the right ventricle, incised wound on the upper lobe of left lung, cut in trachea and fracture of cervical vertebra. She, vide her autopsy report Ex. P4, opined that Madhusudhan had died due to injury No. 1 about 19 to 20 hours from the time of autopsy and the injury was sufficient in the ordinary course of nature to cause death.

8. After usual investigation, the appellants as also the acquitted accused A3 to A9 were charge-sheeted under Sections 147, 148 and 302 read with Section 149 of the Indian Penal Code.

9. The Sessions Judge framed charges under Sections 148 and 302 read with Sections 34 and 149 of the Indian Penal Code against all the accused persons. They adjured their guilt but did not examine any witness in evidence.

10. The Sessions Judge convicted and sentenced the accused A1 and A2 and acquitted the remaining accused persons as mentioned above.

11. We have heard the learned counsel of the appellants and the acquitted accused respondents as well as the learned Public Prosecutor. The learned counsel appearing for the complainant was also heard.

12. From the evidence of lady doctor B. Rajeswari PW9, it is established that Madhusudhan has met homicidal death. This fact is also established by the evidence of Puli Sreeramulu PW1, Dara Polaiah PW2, Bakkamunthala Ravi PW3, Bandla Munaiah PW4, Visanaka Sivakumar Reddy PW5 and Kavali Sivarmaiah PW13. The fact that Madhusudhan has met homicidal death on 16-1-1991 has

not been challenged on behalf of the accused persons.

13. Before we proceed further, it would be beneficial to reproduce the following passage of the case of Ranbir and Others Vs. State of Punjab,

"The maxim "falsus in uno falsus in omnibus" is not a sound rule to apply in the conditions in this country and, therefore, it is the duty of the Court, in cases a witness has been found to have given reliable evidence in regard to certain particulars, to scrutinise the rest of his evidence with care and caution. If the remaining evidence is trust-worthy and the substratum of the prosecution case remains intact, then the Court would uphold the prosecution case to the extent it is considered safe and trustworthy. No doubt in cases of party factions, there is generally speaking, a tendency on the part of the prosecution witnesses to implicate some innocent persons also along with the guilty ones, but normally where the general substratum of the occurrence cannot be said to arouse any reasonable doubt or suspicion about its having taken place, then the prosecution witnesses, provided they are held to have witnessed the occurrence and to be in a position to identify the assailants, are ordinarily not to be assumed to have left out the actual offenders or the guilty persons, the Court has to sift the evidence and after a close scrutiny with anxious care and caution to try to come to a judicial conclusion as to who out of the accused persons can be safely considered to have taken part in the assault."

14. Bearing in mind the principles laid down in Ranbir's case (supra), we shall now proceed to evaluate the evidence on record.

15. Puli Sreeramulu PW1, Dara Polaiah PW2 and Bakkamunthala Ravi PW3 have testified that on 16-1-1991 they had boarded the bus at about 6.45 P.M., at Madras Bus Stand, Nellore for returning to their village Kanaparhipadu. Kavali Madhusudhan was also occupying the third rear seat of that bus. Bandla Munaiah PW4 and Visanaka Sivakumar Reddy PW5 were also travelling by this bus. Their statement is corroborated by the evidence of Bandla Munaiah PW4 and Visanaka Sivakumar Reddy PW5. Vandati Venkatachalam PW7 has stated on oath that he was the Conductor of the bus on 16-1-1991. At about 6.15 P.M., the bus left Madras bus stand, Nellore for Kanaparhipadu. John Vijaykumar PW6 was the driver of the bus. Kavali Madhusudhan, Puli Sreeramulu PW1, Dara Polaiah PW2, Bakkamunthala Ravi PW3, Bandla Munaiah PW4 and Visanaka. Sivakumar Reddy PW5 were also travelling in this bus.

16. In cross-examination, Vandati Venkatachalam PW7 has stated that he had no trip sheet at that time with him because new trip sheet book was not supplied to him by the owner and the old trip sheet book was over two or three days prior to 16-1-1991. The Investigation Officer, D.V.S.S. Murthy PW 17 has denied during his cross-examination to have seized the trip sheet/log sheet or the ticket book during the course of investigation. B. Mastanaiah PW16 has stated in his cross-examination that the police seized some records relating to the bus but he could not say about the nature of the records seized by the police from the bus. He has

further stated in cross-examination that John Vijaykumar PW6 was the driver and Vandati Venkatachalam PW7 was the conductor of the bus in question since a long time. This bus used to ply regularly from Nellore to Kanuparthipadu. Under these circumstances, it cannot be said that the trip sheet was suppressed by the prosecution. There is evidence on record that no trip sheet was made available to Vandati Venkatachalam PW7 on 16-1-1991 and, therefore, the question of recording the names of the Driver and Conductor or the bus in it does not arise. There is evidence on record that these two persons were respectively the Driver and Conductor of the bus in question from before the date of the incident. There appears to be no reason to disbelieve them on this count.

17. Puli Sreeramulu PW1, Dara Polaiah PW2, Bakkamunthala Ravi PW3, Bandla Munaiah PW4, Visanaka Sivakumar Reddy PW5, John Vijaykumar PW6 and Vandati Venkatachalam PW7 have further stated on oath that when the bus reached near the rice mill of the village Kanuparthipadu it was stopped. The head lights of the bus as well as inside the body of the bus in question were also burning as it was 7.30 P.M. Puli Sreeramulu PW1, Dara Polaiah PW2 and Bakkamunthala Ravi PW3 have stated on oath that A7 was armed with spear, A8 was armed with knife and A9 was armed with Gorasa Kathi were present outside the bus. PW1 and PW6 have stated that they had forcibly stopped the bus. A1 and A2 armed with spears had entered the bus from the front door. A3 armed with spear, A4 and A5 armed with axes and A9 armed with Gorasa Kathi went to the rear door of the bus from the front door and they searched for Kavali Madhusudhan and finding him in the bus, A1 gave a spear blow on his thorax and then A2 also gave him a spear blow around about the same place uttering "kill communist nakoduku". Then A1 and A2 dragged Kavali Madhusudhan from the bus towards the rear door and took him out of the bus. A3 to A9 beat Kavali Madhusudhan and dragged him to a distance of 100 yards.

18. John Vijay Kumar PW6 has stated on oath that three persons came across the road armed with knife and spears and had stopped the bus. In the trial Court he identified A7 to A9 as the persons who had stopped the bus and also A1 and A2. He has further stated on oath that they had entered the bus from the front door. Bandla Munaiah PW4, Visanaka Sivakumar Reddy PW5 and Vandati Venkatachalam PW7 have testified that A1 and A2 had entered the bus from the front door and had given spear blow turn by turn on the neck of Kavali Madhusudhan and dragged him towards the rear door of the bus. They have also stated that the bulbs inside the bus were burning at that time.

19. Visanaka Sivakumar Reddy PW5 has stated that at the time of the incident A3, A4, A5 and A6 were standing armed with various weapons by the side of the rear door of the bus. When A1 and A2 dragged Kavali Madhusudhan out of the bus, A8 and A9 also joined them and Kavali Madhusudhan was taken by them towards the northern side of the road. Vandati Venkatachalam PW7 has stated that at the time of the incident A2, A3, A4, A5 and A6 armed with various weapons were standing on the rear side of the bus. When A1 and A2 dragged

Kavali Madhusudhan towards the rear door of the bus, A3 to A9 joined them and took him out of the bus, beat him and carried him away.

20. Bandla Munaiah PW4 has deposed that A1 saying that "champandira communist nakodukunu" stabbed Kavali Madhusudhan with his spear on his throat. Later A2 also stabbed Kavali Madhusudhan with his spear on the same place and both of them dragged him out of the bus and carried him towards the northern side of the road. It is pertinent to note that he has not stated a word about the part played by the acquitted accused A3 to A9.

21. The trial Judge rejected the evidence of John Vijaykumar PW6 on the ground that he identified A1, A2 and A7 to A9 only during the course of cross-examination in Court. He did not know their names. He also found that the independent witness Bandla Munaiah PW4 would have definitely seen A3 to A6 had they participated in the crime and had taken away the injured Kavali Madhusudhan with A1 and A2. The evidence of PWs 1 to 7 is inconsistent so far as the overt acts of A3 to A9 are concerned. A9 was an old man of 65 years and was not able to even stand during the course of trial and, therefore, it was doubtful whether he participated in the crime and carried the injured Kavali Madhusudhan along with the other accused persons. Under these circumstances, the trial Court gave benefit of doubt to A3 to A9.

22. Shri K. G. Kannabiran, the learned counsel of the appellants A1 and A2 has advanced the following arguments for rejecting the evidence of the prosecution witnesses :

(i) Had Madhusudhan been stabbed by the spear in the bus, there must have been gushing of blood and the investigating officer would have found pool of blood there.

(ii) John Vijaykumar PW6 and Vandati Venkatachalam PW7 would not have continued to ply the passenger bus in the usual manner.

(iii) John Vijaykumar PW6 and Vandati Venkatachalam PW7 although visited the work shop at Nellore subsequent to the alleged incident, yet they did not report the incident to the police and, therefore, they are not worthy of reliance.

(iv) The investigation officer would have definitely seized the bus and the trip sheet and in the alternative the suppression of trip sheet indicates that PWs 6 And 7 were not the driver and the conductor of the bus respectively at the relevant time.

(v) The prosecution witnesses Puli Sreeramulu PW1, Dara Polaiah PW2 and Bakkamunthala Ravi PW3 were the old enemies of A1 and A2 and, therefore, they would have preferred to kill them instead of the deceased - Kavali Madhusudhan, had they been the real assailants.

(vi) The bus was over-crowded and, therefore, it was impossible for A1 and A2 to inflict injuries with three feet long spears on the neck of the deceased because

there was no space for reversing the spear before inflicting the injuries with force.

(vii) Only one external injury on the neck of the deceased Madhusudhan has been found by the lady doctor B. Rajeswari PW9, who conducted autopsy, and, therefore, it appears improbable that two blows simultaneously given by two different persons with sharp edged weapon would land with such extitute so as to cause only a single wound.

(viii) Had the injury been caused by the seized spear, its broken tip should have been found inside the wound instead of lying on the ground near the body of the deceased.

(ix) The investigating officer had come to know about the incident at 9.45 P.M., only in the police station and had proceeded for investigating the crime and, therefore, the FIR, Ex. P1 lodged about three hours thereafter during the course of investigation cannot be treated as FIR, and it is hit by Section 162 of the Code of Criminal Procedure.

(x) There was inordinate delay in reporting the matter to the police by Puli Sreeramulu PW1 as also in recording the statements of witnesses.

(xi) Adverse inference should have been drawn against the prosecution for non-examining the independent witnesses though available in the bus at the relevant time.

(xii) The prosecution witnesses PWs 1 to 3, 5 and 6 are partisan witnesses and, therefore, their testimonies should not be accepted at all.

(xiii) The trial Judge should have acquitted A1 and A2 on the same reasoning as given for the acquittal of A3 to A9.

23. With due defference, none of these arguments is sound. For some of them, there is no factual foundation in the evidence.

24. As regards point No. (i) : We get from the evidence of Dara Polaiah PW2 and Bandla Munaiah PW4 that due to the injuries received by Kavali Madhusudhan on his neck there was gushing of blood in the bus. There is evidence on record that the bus, after the incident, was taken to Nellore and was kept in some garage for its alleged repairs and then it was brought back to the village Kanuparthipadu and was kept in the premises of the rice mill. John Vijaykumar PW6 has stated in his cross-examination that the bus was not allowed to be plied, thereafter, by the police. The possibility of washing the bus at the work shop at Nellore cannot be ruled out and this appears to be the reason as to why the investigating officer PW17 could not find large quantity of blood in the bus. Merely because the dead body of Kavali Madhusudhan was found in a pool of blood in the open field, it cannot be said that the deceased-Kavali Madhusudhan did not receive injuries on his neck in the bus, for the reasons given below :

There is evidence on record that there was sufficient light in the bus at the relevant time and A1 and A2 were known to the prosecution witnesses PWs 1 to

5 and 7 from before the date of the incident and therefore, the question of their identity cannot be doubted. They have stated that the injured Kavali Madhusudhan was dragged out of the bus and was taken away towards the northern side. We get from the evidence of Bynamudi Masthanaiah PW15 that in the morning of 17-1-1991 the dead body of Kavali Madhusudhan was found in the field of Pallamareddy Mastanreddy. The spear M.O. 1 and its broken tip, lying near the dead body, were seized. The properties of the deceased were seized. He has further stated that from the place where the dead body of Kavali Madhusudhan was lying up to the place where the bus was originally stopped, the police recovered bloodstained earth and its controlled earth from eight places and they are from MOs. 9 to 24, vide seizure memo. Ex. P15. The police had entered the bus which was standing in the premises of the rice mill of Mudhukrishna Reddy and had found bloodstains in the bus. The bloodstained scrappings are at MOs. 27 to 30. The seizure memo. is at Ex. P17. This part of his statement has not been challenged during his cross-examination. We also get from the evidence of the investigating officer, D.V.S.S. Murthy PW17, that blood stained earth from the place where the dead body of Kavali Madhusudhan was lying up to the place where the bus was alleged to have been stopped were seized from eight places. He has also found bloodstains on the rear door of the bus as also from the rear seat. Scrappings of the blood stained portions were collected and seized. His statement remains unchallenged during the course of cross-examination. On a perusal of the report of the Chemical Examiner Ex. P14, it is revealed that the bloodstained earth seized from the place where the dead body was lying up to the place where the bus was alleged to have been stopped was stained with human blood. The spear MO1 and the tip of the spear were also found to be stained with human blood.

25-26. From the aforesaid discussion of evidence on record, it appears that human blood was found in the field of Pallamreddy Mastanreddy and trail of blood was also found from that place up to the place where the bus was alleged to have been stopped as also on the rear third seat of the bus and the entrance of the back door of the bus. The finding of the human blood, in the relevant portion of the bus as also the trail of human blood from the place where it was stopped up to the place where the dead body of Kavali Madhusudhan was lying, establishes that Kavali Madhusudhan received spear injuries in the bus and his body was carried from the bus up to the field of Pallamreddy Mastanreddy. Under these circumstances, the case of Bhimappa Jinnappa Naganur Vs. State of Karnataka, and Meharaj Singh v. State of U.P., 1994 SCC (Cri) 1390, are of no help to A1 and A2 for the simple reason that the trail of blood was not found in those cases and, therefore, these two cases are distinguishable on facts.

27. As regards point Nos. (ii) and (iii) : From the evidence of John Vijaykumar PW6 and Vandati Venkatachalam PW7, it appears that they talked casually about the injury received by Kavali Madhusudhan at the relevant time and about his taking away by the accused persons. Under these circumstances, it can be inferred that they did not know at that time that Kavali Madhusudhan had

received fatal injury. Thinking that the injury was not serious, they took the bus to the village Kanuparthipadu and from there back to Nellore. There is evidence on record that only few passengers had boarded the bus from Nellore up to the place of incident only and thereafter there remained no passenger to be taken to Nellore. The Driver and Conductor of the bus did not report the matter with the police, may be due to fear of their involvement in the crime or seizure of the bus, effecting their future business or may be thinking that the people of Kavali Madhusudhan would report the matter with the police or may be because they did not want to cross swords with the accused persons. Be that as it may, merely because they took the bus to Nellore and back to Kanuparthipadu and their not reporting the matter with the police will not impair their testimonies because different people behave in different ways in a given situation.

28. As regards point No. (iv) : We have already discussed in the preceding paras of the judgment that trip sheets were not available in the bus on 16-1-1991 and, therefore, the question of its seizure or suppression does not arise. Hence no adverse inference can be drawn against the prosecution for the alleged suppression of the trip sheets, particularly, because from the evidence discussed above it appears that John Vijaykumar PW6 was the driver and Vandati Venkatachalam PW7 was the conductor of the bus at the relevant time. As noted above, the bus did not ply after 10.30 P.M., till it was inspected by the investigating officer. There is evidence on record that when the investigating officer had first come to the scene of occurrence the bus was at Nellore and when he came for the second time he was engaged in performing other more important duties. Under these circumstances, non-seizure of the bus is inconsequential.

29. As regards point No. (v) : True that Puli Sreeramulu PW1, Dara Polaiah PW2 and Bakkamunthala Ravi PW3 were the enemies of the deceased-Kavali Madhusudhan instead of these persons for inflicting the injuries is a question which can be answered by them only because they themselves only knew their plan and strategy. There is evidence on record that Kavali Madhusudhan was the cousin of Puli Sreeramulu PW1 and he was studying law at the relevant time. He had also been made a co-accused by the party of the accused persons in criminal cases. There is also evidence on record that seeing A1 and A2 the prosecution witnesses Dara Polaiah PW2 and Bakkamunthala Ravi PW3 had hid their faces. It appears that they anticipated that the deceased-Kavali Madhusudhan might prove himself to be stronger enemy in future or they wanted to kill the brother of Puli Sreeramulu PW1 in his presence to teach him a lesson, they made him their victim. Be that as it may, merely because the appellants A1 and A2 did not attack PWs. 1 to 3 in the bus will not absolve them from their complicity in the offence on the aforesaid ground.

As regards point No. (vi) : There is evidence on record that after the bus was stopped at place of incident a number of passengers got down from the bus and

went away. Only twenty to thirty persons remained in the bus. Therefore, it can be safely inferred that there was sufficient space for reversing the spears easily before inflicting the injuries on Kavali Madhusudhan in the bus. Since there was no over-crowding by then it was not impossible for the assailants for inflicting the injuries in question with three feet spears on the neck of the deceased.

30. As regards point Nos. (vii) and (vii) : Doctor B. Rajeswari PW9 has testified that on external examination of the dead body of the deceased, she found one incised wound measuring 2" x 6" x 1" on the left supra clavicular region and eleven abrasions on other parts of the dead body. On internal examination of the dead body she found incised wound on the left side of plura, incised wound 2" on the pericardium, incised wound 2" on the right ventricle, incised wound 2" x 1/2" x 1/2" on the upper lobe of left lung and the trachea was found cut transversely and completely. The fifth cervical vertebra was also found fractured. All the injuries were antemortem and the external and internal injuries were sufficient in the ordinary course of nature to cause death. The internal injuries were sufficient in the ordinary course of nature to cause death. The internal injuries were corresponding to the external incised wound on the neck. In cross-examination she has stated that she was of the firm opinion that the death was caused due to the injury No. 1. She has also stated in cross-examination that due to the second stab injury the upper lobe of the lungs had received internal injury measuring 2" x 1/2 x 1/2" and according to her both the stabs are in one direction. It is possible to cause stab wounds at the same place on a living person. Thus from the evidence of doctor B. Rajeswari PW9 it is established that two spear blows were inflicted at the same place of the neck of the deceased-Kavali Madhusudhan.

31. In the case of Purshottam and Another Vs. State of Madhya Pradesh, , the medical officer who had performed the post-mortem examination was of the firm opinion that only one external injury found on the body of the deceased could not be the result of two simultaneous blows. In the ordinary course of human events and experience also, it was extremely improbable that three blows simultaneously given by three different persons from different directions with sharp-edged weapons would land with such precision and exactitude so as to cause a single wound of such clean-cut margins and such dimensions. In this case three blows were given simultaneously by three assailants from different directions. Whereas, in the case in hand, there is evidence on record that both the spear blows had been given simultaneously from the same direction. Secondly, as stated above, from the evidence of doctor B. Rajeswari PW9 it is established that, looking to the external injuries, two blows at the same place could have been caused by the appellants, whereas in Purshottam v. State of M.P. (supra) the medical officer had ruled out the possibility of causing only one external injury by two simultaneous blows. Under these circumstances, the case of Purshottam v. State of M.P. (supra) is of no help to the accused-appellants because it is distinguishable on facts.

32. True, that doctor B. Rajeswari PW9 has stated in her cross-examination that

if a person is stabbed with a spear and during pulling it out if the tip of the spear breaks then the broken tip would naturally be available in the wound. But, there is no evidence on record that the tip of the spear MO1 was broken at the time of its pulling out from the wound. The possibility of breaking the tip of the spear by the assailants cannot be ruled out at the place where the dead body of Kavali Madhusudhan was found later, due to variety of reasons. There is also evidence on record that there were other spears also. Hence it cannot be said that the seized spear MO1 only was the weapon of offence. Under these circumstances, all that can be said is that the tip of the spear MO1 was not broken at the time of its pulling out from the wound.

33. As regards point Nos. (ix) and (x) : In the case of State of Andhra Pradesh Vs. Punati Ramulu and others, , the police constable on a "bandobast" duty had informed about the occurrence to the Circle Inspector, who had gone to the village and has started the investigation in the case. During the course of investigation PW1 on returning from the police station along with the written complaint handed over the same to him and thereafter, he had recorded FIR Ex. P1. Under these circumstances, it was found that Ex. P1 could not be treated as the FIR, in the case as it certainly would be a statement made during the investigation of a case and hit by Section 162 of the Code of Criminal Procedure, particularly, because on facts it was found that the FIR, Ex. P1 was prepared on the spot during the course of investigation after due deliberations, consultations and discussion. The investigation, under these circumstances, was found to be tainted investigation and fatal to the case of the prosecution.

34. In the case in hand, D.V.S.S. Murthy PW17 has stated that on 16-1-1991 at about 9.45 P.M., on receiving vague information about a murder near Kanuparthipadu village, he had gone there. He found the dead body of Kavali Madhusudhan lying on the vacant land of Pallamreddy Mastanreddy. On enquiry, neither the parents of the deceased nor anybody from the persons who had gathered there gave any information about the occurrence. In cross-examination, he had denied that he did not examine on record the statements of certain passengers of the bus. He had received a telephonic call of his informer who gave him a vague statement about the incident and, therefore, he had proceeded to verify the truth or falsehood of the information.

35. In the case of Pattad Amarappa and Others Vs. State of Karnataka, the appellant has attacked the prosecution case with reference to the first information report Ex. P1 given by PW1 on the ground that it is hit by Section 162 of the Code of Criminal Procedure because PWs. 1 to 5 have stated in their evidence that they told the investigating officer PW35 at the village itself the manner in which the occurrence had taken place and that their statements were reduced to writing. The contention was rejected by the Apex Court on the ground that the investigating officer. PW35 had categorically denied having questioned the witnesses or recording their statements at the village on that night. On the other hand, he had emphatically stated that he recorded the statement of PW1

only at the police station at about 11.45 P.M., and recorded the statement of the other witnesses thereafter. The investigating officer PW5 had gone to village Kawaloor on that night only on the basis of some vague information about violence having broken out in the village. Under these circumstances, it was found that he could not, therefore, have gone prepared to the village to record any statement or to do any investigation. Moreover, there were no lights in the village and this would have hampered PW35 in recording any statement even if he had wanted to do so.

36. In this case, Kavali Sivarmaiah PW13 has stated that at about 11.00 P.M., police came and went away and they came in the early hours of 17-1-1995 and examined him. Police examined him on the night also. In cross-examination, he has stated that he could not say whether police had recorded his statement but he had informed the police on both the occasions about the incident. But, as noted above, the investigating officer D.V.S.S. Murthy PW17 has categorically denied to have recorded the statement of any person on the spot or in the village on the night of 16-1-1991. There is evidence on record that there was no electric light on the spot. Kavali Sivarmaiah PW13 had lost his young son a few hours before the investigating officer PW17 had reached near the spot. He must have been in panicstricken state and, therefore, would not have been able to give cogent and comprehensive statement to the investigating officer PW17 about the incident. It appears that for fear that he may not be disbelieved and his evidence may appear to be more reliable, Kavali Sivarmaiah PW13 has stated in the last sentence of his examination in chief that police examined him on the night also because immediately preceding the last sentence he had stated that the police had come and went back and then again came in the early hours on 17-1-1991 and examined him. We get from the evidence of the investigating officer PW17 that he had received a vague information on telephone by his informer that some murder had taken place near the village Kanuparthipadu and in order to verify the genuineness of the information he had gone to the spot. Even after interrogation nobody told him about the incident. The facts of this case are more or less similar to the case of *Pattad Amarappa v. State of Karnataka* (supra).

37. In the case of *State of A.P. v. Punati Ramulu* (supra) it was none-else than the police constable on "bandobast" duty who had narrated the incident to the investigating officer PW22 and thereafter he had gone to investigate the offence and during the course of the investigation, PW1 had presented before him the written report Ex. P1 in the village Pamidipadu. There is evidence on record that Puli Sreeramulu PW1 had gone by the side of the railway track to the police station and had presented the written report Ex. P1 to the Head Constable Mohd. Hanif PW16, who recorded the FIR at 12.30 in the mid night. From the evidence of Puli Sreeramulu PW1 and Dara Venkataramanaiah PW14 it appears that they were near the dead body till about 9.00 P.M., and thereafter on the dictation of Puli Sreeramulu PW1 the written report Ex. P1 was written by Dara Venkataramanaiah PW14 then they went on foot by the side of the railway track to the police station to lodge the report. Under these circumstances, the case of

State of A.P. v. Punati Ramulu, (supra), is distinguishable on facts, and, therefore, it cannot be said that Ex. P1 was not the earlier statement to be treated as FIR, and hence it is hit by Section 162 of the Code of Criminal Procedure.

38. Even if it is assumed that Kavali Sivarmaiah PW13 has stated to the investigating officer D.V.S.S. Murthy PW17 at about 11.00 P.M., on the night of 16-1-1991 about the incident, his statement would be treated as the first information because the investigating officer PW17 has stated that he had only received a vague information in the police station and to verify the truth or falsehood of the same he had visited the spot. The first information report is not an indispensable requisite for investigation of a crime. The investigation can be started even without that. For all these reasons, even if it is assumed that Ex. P1 is not the first information report and it is hit by Section 162 of the Code of Criminal Procedure and it is excluded from record, the prosecution case is not destroyed.

39. The deceased-Kavali Madhsudhan was the first cousin of Puli Sreeramulu PW1. He was murdered by his enemies of the deepest-dye. Under these circumstance, it is plain that he must have got humiliated, insulted and stunned because of sudden occurrence in the course of which his young cousin had received injuries, which ultimately proved fatal. It is because of him that the deceased-Kavali Madhusudhan had joined hands with him and for his death he might have thought himself answerable to his father Kavali Sivaramaiah PW13. Therefore, it must have taken some time for Puli Sreermulu PW1 to get out of the state of shock, insult and humiliation and regain composure and, thereafter, he went on foot with the written report.

40. For the foregoing reasons it cannot be said that there was inordinate delay in reporting the matter to police by Puli Srreramulu PW1.

41. Immediately after receipt of FIR, Ex. P1, the investigating officer D.V.S.S. Murthy PW17 returned to the village and started the investigation. He recorded the statements of the witnesses in the early morning of 17-1-1991. He had already recorded the statement of the witness available in the police station nd, thereafter, on the spot. Hence it cannot be said that there was delay on his part to record the statement of the eye witnesses.

42. As regards point Nos. (xi) and (xii) : There is evidence on record that there were two warring factions in the village Kanuparthipadu, one led by Puli Srreramulu PW1 and the second led by Chandi Venkatarmaiah, of which the accused persons were active members. There has been criminal litigation between these two factions. They were on logger hands. The prosecution has examined Bandla Munaiah PW4 and Vandati Venkatachalam PW7 who appear to be independent witnesses. In the case of Raghubir Singh Vs. State of U.P., , the Apex Court has observed that the prosecution is not bound to produce all the witnesses said to have been seen the occurrence. Material witnesses considered

necessary by the prosecution for unfolding the prosecution story alone need be produced without unnecessary and redundant multiplication of witnesses. In this connection, general reluctance of an average villager to appear as a witness and get himself involved in cases of rival village factions when spirits on both sides are running high has to be borne in mind.

43. There is evidence on record that immediately when the bus was stopped there was commotion in the bus and many passengers had alighted from the bus and went to their village on foot. The other independent witnesses present in the bus would not have either witnessed the incident minutely or would not have come forward to give evidence against the accused persons. This argument finds support from the evidence of the investigating officer D.V.S.S. Murthy PW17, who has stated that in spite of interrogation nobody had come forward to speak about the incident on the relevant night.

44. For the foregoing reasons, no adverse inference can be drawn against the prosecution for non-examining more independent witnesses in support of its case. The evidence of the partisan witnesses had not been accepted at their face value by the trial Court, as would be discussed in the later part of our judgment.

45. The dock identification made by John Vijaykumar PW6 does not inspire confidence. There is evidence on record that the bus was overcrowded. Puli Sreeramulu PW1 has not claimed to have occupied the first front row of the bus. The bus was suddenly stopped and according to PW1, immediately thereafter, A7 to A9 has gone near the rear door of the bus. This must have been done in fraction of a minute. There was obstruction before Puli Sreeramulu PW1 due to the passengers sitting and standing before him. Under these circumstances, it is difficult to rely on his evidence to hold that actually A7 to A9 had stopped the bus. As observed by the Sessions Judge, A9 was an aged man of 65 years and was not able even stand during trial. His act of stopping the bus and running towards the rear door of the bus appears to be improbable. There is evidence on record that there was not sufficient light near the rear door or behind the bus. Therefore, it does not appear possible for PWs 1 to 3, 5 and 6 to have seen A3 to A9 near the hind portion of the bus in the darkness and their alleged overt acts. It is pertinent to note that they did not say in their evidence that A3 to A9 had entered the bus. These witnesses are the bitter enemies of A3 to A9. Hence it appears doubtful whether A3 to A9 were present at the time of the incident or they had beaten and taken the accused Kavali Madhusudhan from the place of occurrence to the filed of Pallamreddy Mastanreddy.

46. It is pertinent to note that Bandla Munaiah PW4 has not stated on oath that he had seen A3 to A9 also near about the bus. He is an independent witness. His evidence contradicts the evidence of the prosecution witnesses PWs 1 to 3 and 5 that A3 to A9 were present at the time of incident and had taken part in beating of the deceased-Kavali Madhusudhan and carrying him away. On the other hand, the evidence of PWs 1 to 3 and 5, if believed, contradicts and demolishes the evidence of PW4 that he did not notice the presence of A3 to A9 and the part

played by them.

47. In the case of Harchand Singh and Another Vs. State of Haryana, , it is held as follows : at page 369; of Cri LJ.

"The function of the Court in a criminal trial is to find whether the person arraigned before it as the accused is guilty of the offence with which he is charged. For this purpose the Court scans the material on record to find whether there is any reliable and trustworthy evidence upon the basis of which it is possible to found the conviction of the accused and to hold that he is guilty of the offence with which he is charged. If in a case the prosecution leads two sets of evidence, each one of which contradicts and strikes at the other and shows it to be unreliable, the result would necessarily be that the Court would be left with no reliable and trustworthy evidence upon which the conviction of the accused might be based. Inevitably, the accused would have the benefit of such a situation."

48. On the touch-stone of the principle laid down in Harchand Singh v. State of Haryana (supra), and in view of the aforesaid discussion of the evidence on record, agreeing with the trial Court, we reach to the conclusion that A3 to A9 are entitled for benefit of doubt.

49. The evidence of Puli Sreeramulu PW1, Dara Polaiah PW2, Bakkamunthala Ravi PW3 and Visanaka Sivakumar Reddy PW5 is corroborated by the evidence of the independent witnesses Bandla Munaiah PW4 and Vandati Venkatachalam PW7 that A1 and A2 had stabbed by means of their spears on the neck of Kavali Madhusudhan and had dragged him out of the bus and had carried him away with the help of their companions, whosever they might have been. There evidence is also supported by the evidence of doctor B. Rajeswari PW9. The evidence of Puli Sreeramulu PW1 is also supported by material particular by the first information Ex. P1. PWs1 to 5 were travelling in the bus and there was sufficient light in the bus to identify the assailants of the deceased-Kavali Madhusudhan, particularly, because many passengers had alighted due to commotion. The accused A1 and A2 were known to these witnesses from before the date of the incident. It is well settled that merely because a portion of the testimony of a witness is unreliable, it is not a ground to brush aside his entire testimony. The maxim "falsus in uno falsus in omnibus" should not be mechanically applied in India. The mere fact that the evidence of some witnesses was unsafe for convicting one of the accused is no ground for rejecting the whole body of the testimony with regard to other accused. The case of Joginder Singh Vs. The State of Punjab, , is distinguishable on facts because the reasoning for acquittal of A3 to A9 does not apply to the remaining accused persons i.e., A1 and A2 because other accused are entitled to benefit of doubt. It has also been faintly argued on behalf of the appellants that two sets of statement of the witnesses had been prepared but only one set was provided to the accused-appellants. On the basis of the material on record, we compared both the sets of the statement of the witnesses and found that there are omissions in the second set. But, omissions are not material. It can by no stretch of imagination be said

that the case of the accused-appellants has been prejudiced by the aforesaid immaterial omissions. The prosecution had not suppressed the real statement of the witnesses nor had prepared two sets of statements. But, it appears that due to clerical mistake some immaterial omissions have occurred in that set of the statement of witnesses, which statements were supplied to the accused-appellants.

50. For the foregoing reasons, agreeing with the Sessions Judge, we reach to the conclusion that the prosecution has successfully established that the accused-appellants A1 and A2 have committed the murder of Kavali Madhusudhan. They had come inside the bus in a body armed with spears, had inflicted the injuries on the same in the neck of the deceased and then had jointly taken him out side the bus. Thus it appears that they had formed a common intention of murdering Kavali Madhusudhan and in furtherance of the same had committed the aforesaid acts and, therefore, they are liable for the murder of Kavali Madhusudhan u/s 302 read with Section 34 of the Indian Penal Code.

51. Before we part with the appeal, we are constrained to observe that the impugned judgment passed by the Sessions Judge is a very lengthy judgment and the facts of the prosecution case have been unnecessarily repeated again and again. After narrating the case of the prosecution in unnecessarily details, the Sessions Judge mentioned point by point the arguments of the Additional Public Prosecutor and then the arguments advanced by the counsel of the accused persons with citations, but did not discuss the evidence of the witnesses and did not meet the contentions or the counsel of both the parties. After doing this exercise in 48 lengthy paragraphs, the Sessions Judge has discussed the evidence of the prosecution witnesses in two paras only. He should have marshalled and appreciated the evidence of the prosecution witnesses at the proper places and recorded the finding pointwise, starting with the point for consideration whether the deceased-Kavali Madhusudhan met a homicidal death on 16-1-1991 ?

52. Writing a lengthy judgment by repeating the facts is time consuming and at the same time reading such judgments not only causes, inconvenience but also at times causes annoyance. In this connection, we further find that the examination in chief of the medical officer Dr. B. Rajeswari PW9 and the investigating officer PW17 was conducted in a casual manner and the evidence was also not recorded in a proper way. It is the duty of the prosecution, and no less of the Court, to see that the alleged weapon of the offence, if available, is shown to the medical witness and his opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon, vide *Ishwar Singh Vs. State of U.P.*, . If the weapon is not available then the description of the weapon should be given to the medical expert to ascertain the aforementioned facts. This is the duty of the Public Prosecutor conducting the case. But, in case he fails to do that, it becomes the responsibility and duty of the trial Court to elicit from the medical expert about the aforementioned facts, because failure to

do so may some times cause aberration in the course of justice. The observation report Ex. P17 prepared by the investigating officer PW17 reveals that the floor of the bus in question appeared to have been washed, but he has not spoken so in his evidence. These observation reports should be proved like any other document as per the provisions of Section 60 of the Evidence Act.

53. It would be beneficial to reproduce the following passage, for the guidance of the trial Courts of the case of Ram Chander Vs. State of Haryana, .

"The adversary system of trial being what it is there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a Criminal Court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. But this he must do, without unduly trespassing upon the functions of the public prosecutor and the defence counsel, without any hint of partisanship and without appearing to frighten or bully witnesses. Any questions put by the judge must be so as not to frighten, coerce, confuse or intimidate the witnesses."

54. In result, the appeal of the accused-appellants A1 and A2 stands dismissed and they are convicted u/s 302 read with Section 34 of the Indian Penal Code instead of Section 302 of the Indian Penal Code. No interference is called for in the sentences awarded to them. The appeal filed by the state against the acquittal of accused Nos. A3 to A9 as also the revision filed by the complainant against the acquittal of accused Nos. A3 to A9 fails and are hereby dismissed.

55. The Registry will place a copy of the judgment before the Honourable the Chief Justice and seek orders as to whether copies of the judgment should be circulated to all the Session Judges.

56. Order accordingly.