
(1999) 02 AP CK 0038

In the Andhra Pradesh High Court

Case No : Criminal A. No's. 408 of 1998 and 409 of 1998

Kollam Brahmananda Reddy

APPELLANT

Vs

State of A.P

RESPONDENT

Date of Decision : 11-02-1999

Acts Referred:

Arms Act, 1959 — Section 24(1B), 25(1), 27

Criminal Procedure Code, 1973 (CrPC) — Section 162, 174, 235(2), 313

Penal Code, 1860 (IPC) — Section 105, 120

Citation : (1999) 2 ALD 405 : (1999) 1 ALD(Cri) 525 : (1999) CriLJ 2368

Hon'ble Judges : Neelam Sanjiva Reddy, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : Mr. E. Ayyapu Reddy for G. Srivasulu Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

N.Y. Hanumanthappa, J.—Aggrieved by the judgment and order passed by the learned II Additional Sessions Judge, Cuddapah in Sessions Case No.5 of 1994 dated 27-2-1998, accused No.2 has filed Criminal Appeal No.408 of 1998 and accused Nos.3 to 7 have filed Criminal Appeal No.409 of 1998. The learned Sessions Judge by his above judgment and order convicted A2 to 6 for the offence punishable u/s 148 of IPC and sentenced them each to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.100/-, in default simple imprisonment for three months. Again he convicted A2 to A6 for the offence punishable u/s 302 of IPC sentenced each of them to undergo imprisonment for life and each of them to pay fine of Rs.100/-, in default, to suffer simple imprisonment for a period of three months. Ordering both sentences to run concurrently. Learned Sessions Judge convicted A7 for the offence punishable u/s 148 IPC and sentenced him to undergo rigorous imprisonment for a period of one year and to pay fine of Rs. 100/-and in default, to suffer simple imprisonment for a period of three months. Again he convicted him for the offence punishable u/s 302 IPC read with Section 149 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.100/- in

default to suffer simple imprisonment for a period of three months. A7 also convicted for the offence punishable u/s 235(2) Cr.PC and under Sections 25(1)(b)(a) and 27 of Indian Anns Act and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.100/-, in default, simple imprisonment for a period of three months. Ordering all the sentences to run concurrently. Before the learned Sessions Judge's Court altogether all accused were charge-sheeted for several offences. A1 died during the trial and A8 to A10 were acquitted for offences u/s 147 and 302 read with Section 149 IPC. A11 was not committed as no sanction of prosecution was granted. All the accused were acquitted for the offence u/s 120-B of IPC. The Court below also ordered that no separate sentence for offence u/s 147 IPC against A2 to A7 be imposed as they are convicted for the offence u/s 148 IPC. Since these two appeals arise out of same order, they are clubbed and disposed of by a single order.

2. A few facts which are necessary to dispose of these two appeals are as follows : The case of the prosecution is that , A1-Moore Chengal Reddy, A2-Kollam Brahmananda Reddy, A3-Kallam Gangireddy, A4-Mudda Venkata Reddy @ Babu, A5-Moore Srinivasalu Reddy, A6-Sheemu Narasimha Reddy @ Duvutum, A7-Jogi Ramachandra Reddy, A8-Lakkireddi Venkata Reddy, A9-Yerra Subrahmanyam Reddy and Mani and A10-Orsu Chinna Kumar all are residents of the neighbouring villages. A1 and A5 are brothers, A2 and A3 are brothers, A4 is brother-in-law of A2, A6 to A9 are related to A2. A10 is the driver of A2. It is slated that accused No.2 Kollam Brahmananda Reddy, ex-president of Pullampet Mandal Praja Parishad. The other accused are his followers. Ambati Murali Mohan Reddi - deceased was Managing Director of M/s. Triveni Steels Pvt. Ltd., situated at Venkata Rajampet on Rajampet-Pullampet road. He was a resident of Vathalur village. Ambati Seshareddi - LW1 was father of the deceased, who died before the commencement of the trial. Smt. Ambati Aruna-PW3 is the wife of the deceased. PW2-Subbarayudu, is a civil contractor and a friend of the deceased. PW1-Joggari Venkataiah, a Supervisor in M/s. Triveni Steels Private Limited of which the deceased was the Managing Director. The deceased was a wealthy person doing business, having good number of properties, had built up reputation with the villagers. He was owning a good following both in and around Vathalur village and Pullampet village. His followers wanted him to be a prospective contestant for the post of President, Mandal Praja Parishad, Pullampet. His growing popularity became an eyesore to A2. There were differences between the deceased and A2 in respect of civil contract work of Vathalur tank as both of them wanted the said work to be entrusted to their own followers. The said work was given to S.V.S. Naidu, a follower of the deceased. The same was denied to one M. Pandurangareddi of Chitvel who is the supporter of A2. The same made A2 in the company of A1 and A3 to A10 to hatch a plan to do away with the life of the deceased. A2 sent A1 to the factory of the deceased a day prior to 7-6-1992 on the pretext that there shall be a compromise between them. In pursuance of that plan, on 7-6-1992 at about 7.30 a.m., A1 to A7 took

up position on the road side near Bugga Vanka. A1 to A6 armed themselves with daggers and A7 with a gun and were waiting for the deceased to come in that way. A8 to A10 stood with the new jeep of A2 at the Siddaiah Lemon Garden on Pullampet -Rajampet road which was about 100 yards away from Bugga Vanka. At the same time, the deceased along with his father, Seshareddi (LW1) and PWs. 1 and 2 came in Ambassador car bearing No.ADY 6060 driven by himself from Vathalur to go to Triveni Steels Private Limited. Accused Nos.2 to 7 hid behind the thorny bushes adjacent to Bugga Vanka. A1 was standing on the road margin. After seeing the car of the deceased coming, he stopped the car and asked the deceased to come out of the car on the pretext that he would like to discuss some confidential matter with him, When the deceased got down from the car, A1 took him aside the road upto a distance of three or four yards. All of a sudden, A2 to A7 surrounded him, A1 to A6 inflicted stab injuries on his back, front of the chest, A2 stabbed him on the front of the chest, A3 to A6 stabbed him indiscriminately. The deceased received multiple injuries to the spine and lungs and died on the spot. The inmates of the car LWs.1 and PWs. 1 and 2 saw this and tried to intervene, then A7 by firing his gun into the air scared them away. Thereafter, A1 to A7 ran away and joined A8 to A10 and fled from the scene of offence.

3. Seshareddi, father of the deceased, Rayi Subbarayudu-PW2 rushed to Mannur Police Station where LW 1 -Seshareddi presented a written report to the police about the occurrence of the offence. PW15- Md. Shareef, Sub-Inspector of Police, Mannur Police Station registered the case and investigated into it. PW16-B.V.R Prasad, Inspector of Police, PW17-K. Venkateswara Rao, D.S.P., who conducted further investigation, arrested the accused, seized the weapons used by them for the commission of offences under a cover of mediator reports in the presence of the mediators and the accused were sent for remand.

4. A2 pleaded alibi to the effect that prior to the incident, he was in the S.V.R.R. Hospital, ICCU, for cardiac problem between 3-6-1992 and 8-6-1992. According to PW11-Dr. Govindaiah, treated the accused. But in the investigation made by PWs. 16 and 17, it is revealed that the plea of alibi was a raise one. According to them, A2 was seen by Seshareddi, father of the deceased, M. Venkateswarulu (not examined), K. Pattabhi-PW6 and Chengaiah (not examined) at Mallevaipalli outskirts of Agraham village on the evening of 6-6-1992 and the morning of 7-6-1992 before the commission of offence. One M. Gangaiah (not examined) had witnessed A2 going away in a jeep to Pullampet in the company of A8 to A10 after the commission of murder on 7-6-1992. PW8-Venkata Subbaiah saw them going away towards Tirupathi after the offence when he was standing at Settigunta bus stop. The entries in the case sheet, ICCU nominal register of Cardiology Unit would show that false entries were made to accommodate A2. On completion of investigation, Mannur Police laid a charge-sheet before the Judicial First Class Magistrate, Rajampet in PRC No. 19 of 1992. The learned Magistrate after going through the papers found the offences alleged namely, 147, 148 and 302 read with Section 149 IPC and Section 120-B and also

Sections 25(1)(b)(a) of Indian Arms Act are to be exclusively tried by the Sessions Court. He committed the case to the learned Principal Sessions Judge, Cuddapah. The learned Principal Sessions Judge after going through the papers took the cognizance of the case and registered it as SC No.5 of 1994. Then he made it over to the II Additional Sessions Judge, Cuddapah, for trial and disposal. The learned II Additional Sessions Judge after going through the entire charge-sheet, framed the following six charges against the accused:

"Charge No.1 : That you A8 to A10 on or about 7-6-1992 at about 7.30 a.m., on Vathaluru-Rajampet road near Bugga Vanka along with A] to A7 did commit offence of rioting punishable u/s 147 of the Indian Penal Code and within my cognizance;

Charge No.2 : That you A1 to A7 on or about same day, time and place and in the course of the same transaction were a member of an unlawful assembly along with A8 to A10 and did in prosecution of the common object of such assembly to wit, to commit murder of Ambali Murali Mohan Reddi son of Ambati Seshareddi of Vathalur village, Pullampet Mandal, commit the offence of rioting and at that time you were armed with deadly weapons, daggers, lethal weapons and fire arms and thereby committed an offence punishable u/s 148 of the Indian Penal Code and within my cognizance;

Charge No. 3 : That you A1 to A6 on or about the same day, time and place and in the course of the same transaction being members of the unlawful assembly with the common object of murdering Ambati Murali Mohan Reddi s/to Ambati Sessa Reddi, did commit his murder, by A1 to A6 of you inflicting fatal injuries on the back and front chest and back chest of Ambati Murali Mohan Reddy by stabbing with daggers indiscriminately and that you thereby committed an offence punishable u/s 302 of the Indian Penal Code and within my cognizance;

Charge No. 4 : That you A7 to A10 on or about the same day, time and place and in the course of the same transaction, were a member of an unlawful assembly and in prosecution of the common object which viz., to commit murder of Ambati Murali Mohan Reddy, which you knew likely to be committed in prosecution of the common object of the said assembly and you are thereby u/s 149 of the Indian Penal Code guilty of committing the said offence of murder, an offence punishable u/s 302 of the Indian Penal Code and within my cognizance;

Charge No. 5: That you A1 to A10 a day prior to 7-6-1992 in the house of A2 of you (Kollam Brahmananda Reddy) at Mallemvavipalli, agreed to do an illegal act or an illegal act by an illegal means viz., hatching a plan by conspiring together to murder the deceased Murali Mohan Reddy at an opportune time and place and took position i.e., A1 to A7 of you to be on the road side near Bugga Vanka and AS to A10 you to be at Bus Siddaiah's lemon garden on Vathaluru-Rajampet road on the morning of 7-6-1992 to execute the plan of murder of the deceased and in pursuance of the said agreement, committed murder of Murali Mohan Reddy an offence punishable u/s 302 of the Indian Penal Code and you thereby

committed an offence punishable u/s 120-B of the Indian Penal Code and within my cognizance;

Charge No.6 : That you A7 on or about the same day, time and place and in the course of the same transaction as stated in Charge No.1 were in possession of fire arm in contravention of Section 3 of the Arms Act and used it for unlawful purpose viz., fired and scared Ambati Seshareddy (LW1), Rayi Subbarayudu (LW2) and Sannapaneni Jogari Venkataiah (LW3) from going to the rescue of the deceased Ambati Murali Mohan Reddy (deceased) and you thereby committed offences punishable under Sections 24(1B)(a) and 27 of the Arms Act and within my cognizance."

5. The charges were read over and explained to them. The accused pleaded not guilty. Then the evidence was recorded on behalf of the prosecution. 17 witnesses were examined as PWs.1 to 17 and marked 30 documents as Ex.PI to P30. On defence side, one Chandra Mouli, press reporter of Andhra Jyothi Telugu Daily was examined as DW1 and marked some of the documents namely, press report of Andhra Jyothi, photo of the deceased appeared in Andhra Jyothi as against D1 and D2 and portion of 162 statements of PWs.4, 6, 7 and 8 respectively as D3 to D7. After closure of the evidence, accused were examined u/s 313 Cr.PC. about the incriminating circumstances available against them in the evidence collected, but the accused denied the same and pleaded innocence. On the basis of the evidence available, the learned trial Judge raised the following points for consideration:

"1. Whether the death of the deceased Ambati Murali Mohan Reddy is a homicidal death as alleged by the prosecution ?

2. Whether the accused 1 to 7 having constituted themselves into members of an unlawful assembly with the common object of doing away with the life of A. Murali Mohan Reddy, armed themselves with the deadly weapons i.e., daggers, fire arm (gun) and attacked him with those weapons in furtherance of their common object on 7-6-1992 at about 7,30 a.m. on Vathalur-Rajampet road near Bugga Vanka ?

3. Whether A2 to A6 in the company of the deceased A1, in furtherance of their common object stabbed Ambati Murali Mohan Reddy to death during the course of the same incident?

4. Whether A7 in furtherance of the common object of all the accused armed himself with a gun and fired it into the air to scare away PWs.1 and 2 and the deceased Seshareddy (LW1) ?

5. Whether A8 to A10 in furtherance of their common object to do away with the life of the deceased waited with a jeep near the lemon garden of Siddareddy during the course of the same incident ?

6. After considering the evidence and hearing the arguments on both sides, the Court found that the prosecution was able to make out a case against A1 to A7

but A1 died during the trial against whom the case has been abated and convicted A2 to A7 for the offences noted against them and also sentenced them to undergo imprisonment for the periods mentioned in the order.

7. The trial Court found that PWs.1 and 2 are the eye-witnesses and they spoke about the occurrence of the offence. The deceased himself was driving the car. His father A. Seshareddi, PW1 and PW2 were travelling in the said car with deceased,. After the incident, father of the deceased took PW1 along with him to the Mannur Police Station where the complaint Ex.PI was drafted by PW1 as per the instructions of Seshareddi which was presented to the Police, Mannur. The trial Court took into consideration the evidence of PW-3 Smt. Ambali Aruna to support the prosecution case that on 7-6-1992 at about 7.30 a.m. her husband, her father-in-law and PW1 left their house in ambassador car with a view to go to the factory. Later on the same day at about 8.00 a.m. PWs.1 and 2 returned home and informed that her husband was murdered at Bugga Vanka village by the accused. According to the learned Sessions Judge, PW4, a resident of neighbouring village namely, Thimmareddypally, who stated that on the date of occurrence, he and his other labourers working in the Banana garden which is at a short distance from the scene of offence. He heard the sound of gun shots. But about 10.00 a.m. he went to the scene of offence where he saw the dead body of the deceased A. Murali Mohan Reddy. PW5 is the Sarpanch of Vathalur village. He is a witness to the inquest over the dead body of the deceased,,which took place at 12.00 noon to 3.00 p.m. PW6 is one K. Pattabhi Naidu, who spoke about the alleged conspiracy. At about 5 years ago he saw A1 to A10 getting down from the upstairs of A2. PW7-Maruthi Gangaiah Naidu stated that he saw that five years ago while he was coming to his village by walk from Chavanavaripally, forenoon time he saw A8 and A10 going towards Pullampet, PW8 is one Mr. Inugolu Venkatasubbaiah, who spoke that five years ago he saw A2 and A8 to A10 going in a jeep to Tirupathi at about 9.00 a.m. or 9.30 a.m. while he was waiting at Setligunta bus stop. PW9 is one Guduru Subbarama Raju. He is a panch witness to the seizure of weapons. PW10 is one Tummala Subbareddy, who deposed that in his presence A4 was present in a plantain garden on 4-8-1992 and on his confession, police seized the dragger from his house. PW11 is Dr. A. Govindaiah, who conducted autopsy on the dead body of the deceased at about 4.00 p.m. on 7-6-1992. PW12 is one S. Shabbier Hussain, working as clerk in the office of the District Collector, who spoke about the sanction order given to the prosecution by the Col lector to prosecute A7 under Indian Arms Act. PW13 is one A. Subbarayudu, PC 797, who accompanied the dead body to the Government Hospital, Rajampet for post-mortem. PW14 is Shaik Haneef, PC 1249, who received the FIR and handed over the same to the Incharge Magistrate, Nandalur on 7-6-1992 and copies of FIR to the Inspector of Police, Rajampet and DSP on the same day. PW15 is one Mohammad Sharif working as Sub-Inspector of Police, Mannur on the date of incident. He spoke that PW1-Ambati Seshareddy came to the Police Station at about 9.30 a.m. presented Ex.PI, who in turn, despatched copies to the concerned officers. Then he reached the scene of

offence and conducted inquest over the dead body of Murali Mohan Reddy from 12.00 noon to 3.00 p.m. in the presence of mediators and sent the dead body to the Government Hospital for post-mortem examination. PW16-Inspector of Police, Rajampet and PW17-DSP, who spoke further investigation about the seizure of the weapons alleged to have been used by the accused, seizure of blood stained clothes and arresting the accused A2 to A7 and laying charge-sheet.

8. The trial Court also took into consideration the evidence and statement of DW1, M. Chandra Mouli, press reporter of Andhra Jyothi, who stated that having covered news item of the death of the deceased he visited the scene of offence, where the dead body was lying. Then he met Seshareddy. He despatched the news item to Tirupathi for publishing on the next day (Ex.D1).

9. The trial Court took into consideration the documentary evidence namely Ex.PI report given by Seshareddy to the police. Post Mortem Certificate at Ex.P7, sanction order to prosecute under Ex.P8, FIR in Crime No.45 of 1992 at Ex.P9, Ex.P14 to Ex.P22 registers maintained by the concerned hospital where A2 alleged to have been admitted for cardiac problem and treated as in-patient. Ex.P29 is the alibi petition and Ex.P30 is the Enquiry Report of the alibi petition. The trial Court also took into consideration the news item appeared in the Andhra Jyothi at Ex.D1 and the relevant portions of 162 Cr.PC statements of PW4, PW6, PW7 and PW8. On its consideration, the trial Court found that death of the deceased as told by Dr. Govindaiah, who conducted the post-mortem examination on the dead body of the deceased as one of the homicidal death and found that Point No.2 and 3 mentioned above in favour of the prosecution. Point No. 4 was answered in favour of the prosecution. Regarding Point No.5, the trial Court found that the guilt is not proved against A8 to A10. The trial Court also disbelieved that the plea of alibi set up by A2. In the result, the Court below convicted the appellants herein for several offences and sentenced to undergo imprisonment for different periods was mentioned above. Aggrieved by the same, these two appeals.

10. Sri E. Ayyapn Reddy, learned senior Counsel appearing in both the appeals, attacked the judgment and order passed by the Court below on several grounds. He urged that the Court below should not have placed much reliance on the highly interested and discrepant testimony of PW1 and PW2. These witnesses are inimical towards A2. These witnesses are planted witnesses. Their presence at the time of occurrence of offence is highly improbable. These evidence as to overt acts and corresponding injuries contradicted by medical evidence. Late Seshareddy, father of the deceased cannot be said as an eye-witness to the occurrence of offence. The same is belied by Ex.D2 and other probabilities and circumstances. Thus Ex.P1-FIR is a concocted one. In the absence of motive for the accused to kill the deceased, the accused should not have been connected to the death of the deceased. The Court below erred in not taking into consideration the evidence of PW3-Smt. Ambati Aruna, wife of the deceased. When the author

of Ex.P1 namely Seshareddi, father of the deceased, died, the same should not have been used to prove the case of the prosecution. Learned senior Counsel for the appellants attacked the genuineness of FIR. According to him, there was much delay in lodging the FIR. The same was the result of the deliberations after the arrival of the brother of the deceased from Hyderabad. The evidence of PW14 should have been discarded. According to him, the Court below should have taken notice that PW14 received the inquest report at 3.30 p.m. He reached Rajampet at 5.45 p.m. where the dead body of the deceased was received by Dr. Govindaiah at Rajampet Government Hospital for post-mortem examination even at 3.30 p.m. itself. There is no proper explanation that why FIR reached the Magistrate at 8.15 p.m.

11. The Court below committed mistake in coming to the conclusion that the evidence of PW14 is corroborated by the evidence of PW15 and PW17. The Court below should have taken notice that PW1 and PW2 accompanied the deceased Seshareddy in the same jeep to the Police Station and PW13 and PW15 went to the scene of offence in the jeep of the complainant. Non-giving rescue to the deceased by LW1 and PWs.1 and 2 when the accused attacked, belies the theory of the PW1 and PW2 that the incident took place in their presence. Regarding the manner of attack also, in view of the medical evidence, the evidence of PW1 and PW2 has been falsified. Six persons surrounded the deceased and inflicted injuries indiscriminately. Though there are injuries on the body of the deceased but the injuries found on his body were only on his back, only 2 injuries in front of all other at back of the deceased. The Court below should have taken note of that the deceased might have died two hours after the incident as told by PW11-Doctor. Ex.D1 and D2 were falsified by the evidence of PW1. Ex.D1 and D2 were denied. The version of Ex.D1 and D2 was different with regard to the incident. If Seshareddy was near the scene of offence earlier to arrival of Mannur Police, it is clear that Ex.PI was given at a later point of time in a different Police Station. When the learned Sessions Judge disbelieved the theory of the prosecution, he should have rejected the theory that the accused committed murder of the deceased. Conviction of A3 to A6 u/s 302 IPC in the absence of their causing fatal injury to the body of the deceased is quite illegal. Using of gun by A7 is not proved beyond reasonable doubt as the traces of pellets not collected to find out whether gun was really used. If gun shot was there, there should have been traces of pellets and the same should have been collected. Thus arguing the learned Counsel for the appellants urged that the appeals be allowed and conviction and sentences ordered be set aside.

12. As an answer to these contentions, Smt. Susheela Devi, learned Public Prosecutor supported the findings given and reasoning adopted by the trial Court in ordering the conviction against the accused. According to her, no illegality or irregularity in submitting the FIR and the FIR need not be elaborate or shall contain all the details. Whatever necessary and importance if contained in the FIR then it is sufficient as its intention is to alert the Police to take up further investigation and requests the Court to punish the culprits. According to her, the

incident took place in the border of the territorial jurisdiction of both the Police Stations namely, Mannur and Pullampet and there is no illegality in lodging FIR in Mannur Police Station. The FIR is not the result of the deliberations between the prosecution and the brother of the deceased who came from Hyderabad. All the witnesses were highly disinterested. They spoke only the truth. If PW1 and PW2 had not witnessed, there was no necessity for them to involve the accused to the offence. From the circumstances explained, it could also be inferred that the motive for the accused to murder the deceased was that the accused were not happy with the deceased gaining popularity day by day and they also had other differences. She contended that PW3 is the wife of the deceased, much cannot be expected from a house wife, like Smt. A. Aruna about the differences between the family of the deceased and the accused. She being totally innocent about the differences between the deceased on the one hand and the accused on the other, she spoke only what she knew. The statement of PW3 that there was no differences between the two families in no way weakens the case of the prosecution. There is no artificiality in the evidence of PW12, PW13 and PW 14. Whatever that has been stated by the eye-witnesses further supported from the inquest and shown the same as correct when the autopsy was held and the doctor spoke about the nature of the injuries and the reason for the death of the deceased. The plea of alibi set up by A2 looks most artificial. Any evidence produced is fabricated one. Important persons like Incharge of the Hospital were not summoned to give evidence as to the admission of A2 into Hospital and his treatment. She contended that if A2 really had a Cardiac problem within 24 hours he would not have been put in out-patient ward. The evidence collected by the prosecution would go to show that the plea of alibi is a false one as rightly accepted by the Court below. According to her, whatever minor discrepancies and contradictions are there, are deserved to be ignored. The Court below took into consideration impartially the theory of the prosecution. It also took into consideration the fact of appearance of news item, and relevant portion of 162 Cr.PC statements of some of the witnesses. According to the trial Court, both the oral evidence and the medical evidence go hand in hand agreeing with each other. Nothing is based on the imagination or surmises and conjunctures. On the other hand, the reasoning given by the Court below is the result of sincere and serious appreciation of evidence. The evidence both oral and documentary given by the prosecution is trustworthy and convincing. Order of conviction and sentence made by the Court below is just and proper. As such, according to Smt. Susheela Devi, learned Public Prosecutor that there is no reason for interference in the conviction and sentence ordered against the appellants by the Court below. Thus submitting she urged for dismissal of the appeals.

13. After hearing both sides elaborately, since the prosecution has stated that there was business rivalry and the area to which they belong are faction ridden villages and extended political ambition for leaders of both the groups, we went through the entire judgment and also the evidence given in the case both oral and documentary.

14. The entire case of Hie prosecution revolves mainly on the evidence of PWs.1, 2, 3, 11, 14 and 17 and DW1 and also documentary evidence Exs.PI, P7, P9, P20, P21, P29 and P30. Exs.BI and DI including the portions of Section 162 Cr.PC statements of PWs.4, 6, 7 and 8 in Exs.D3, D4, D5, D6 and D7. The version of the prosecution witnesses with regard to the occurrence of the offence was supported by the evidence of PW11, the doctor who conducted autopsy over the dead body of the deceased. FIR is not a got-up one and the alibi pleaded by the defence is not established.

15. The powers of the Appellate Court are exactly to that of trial Court. It can reassess the evidence and reach its own conclusion and can reverse the judgment if the findings given by the trial Court are arbitrary and not based on correct appreciation of evidence.

16. Now we have to examine the nature of evidence produced and its trustworthiness.

17. Ex.P1 is the complaint said to have been given by late Ambati Sesha Reddy, father of the deceased, to the SI of Police, Mannur on 7-6-1992 at 10.00 a.m. and the same was scribed by PW1, Sannapaneni Joggari Venkataiah, to the dictates of the said Sesha Reddy. The contents of Ex.P1 are as follows:

"To

The Sub Inspector of Police, Mannur, The report got written by Ambati Seshareddy, S/o Subba Reddy, r/o Vattaluru, Pullampeta Mandal.

Sir,

To-day i.e., on 7-6-1992 at about 7.30 a.m., while myself, Rai Sitbbarayudu, Sannapaneni Joggari Venkataiah and my son Murali Mohan Reddy going by car to the Factory from our house, with my son at the driving seat, on the way at the stream, Yuri Chella Reddy stopped our car and said that he had something to say. Then my son Murali Mohan Reddy stopped the car, got down and went with him 3, 4 yards. Then, Pullampeta Mandal President viz., Kollam Brahmanana Reddy, his brother Gangi Reddy, Mudda Venkata Subba Reddy (Haiti), Yuri Sreenivasulu Reddy, Mallemvaripalli Bheema Narasimha Reddy (diviti) who were present there, along with Yuri Chengal Reddy surrounded Murali Mohan Reddy and stabbed him with knives and thereby Murali Mohan Reddy fell down. Then, we got down the car and tried to approach Murali Mohan Reddy, but Jogi Ramachandra Reddy who was there shot the gun. When we cried loudly all the accused ran towards Timmareddy village. There is dispute between my son and the above accused pertaining to the Vattuluru lake contract, and also that my son prospered in the business. As my son helps the public in their need, and the accused thought that he would obstruct and overtake them in the coming Mandal Elections. So, the accused have murdered my son in furtherance of their bad intention to remove him from their way. Hence I request you sir, to take the necessary action against them and do justice to me.

Sd/- A. Sesha Reddy 7-6-1992"

18. As to the witnessing the incident, we have the evidence of PWs. 1 and 2, PW1 is one Mr. Sannapaneni Joggari Venkataiah and he is a resident of Pullampet Mandal. He stated that he is living by cultivation. He was knowing the deceased Murali Mohan Reddy. The deceased was running a factory by name Triveni Steel Industries near Venkatrajampet wherein PW1 was working as Supervisor. The deceased belonged to Vathuluru village which is away from one furlong to his village. He also stated that he was knowing the accused, their relations and their native places. On the date of incident at about 6.00 a.m. he went to the house of the deceased with a view to go to the factory. At 7.15 a.m. himself, the deceased, PW2, Ravi Sitbbarayudu, and Ambali Seshareddy, the father of the deceased, went by an Ambassador car driven by the deceased. To go to the factory one has to go through Rajampet. Rajampet is situated on the northern side of his village. When the car reached Buggavanka, A1 gave a signal to stop the car. The car was stopped at a little distance towards the eastern side. A1 asked the deceased to come with him to have a talk. Then the deceased and A1 went to a little distance ahead. There are cheeki bushes towards the east of the road at a distance of 5 to 6 yards. According to him, A2 to A7 came from the bushes and surrounded the deceased. A7 was holding "Natu Tupaki" and A2 to A6 were holding "Pidi Bakus" (daggers). A2 stabbed with a dagger on the back of the deceased Murali Motion Reddy. A1 took a dagger from his waist and stabbed the right side of the chest of the deceased. The other accused 3 to 6 also stabbed the deceased with daggers. Then, himself, PW2 and late Sesha Reddy got down from the car to protect the deceased. Then A7 fired the gun into air. Sesha Reddy fell down. Then himself, and Subbarayudu went upto 30 to 40 yards with fear raising cries and then they turned towards the accused. The accused running towards Thimmareddypalli. Then himself and PW2 came back and saw the deceased with bleeding injuries and died. Then himself and PW2 went to the house of the deceased. PW2 narrated the incident to PW3 and how the deceased was murdered. After hearing this, PW3 fell down. After hearing the news, the villagers came to the house of the deceased. Then himself, PW2 and other villagers came to the scene of offence. They saw the father of the deceased Sesha Reddy crying near the dead body. After some time, one RTC bus plying through Annasamudram to Rajampet came there. Himself Seshareddy got in the bus and went to Mannur Police Station by 9.30 a.m. The father of the deceased narrated the whole incident which he drafted. After drafting it, the same was read over and explained to him who said the same as correct. Then Sesha Reddy signed on it. He presented it before the SI of Police, Mannur. Then himself, Sesha Reddy and the police went in a jeep to the scene of offence. In the cross-examination, he stated that he worked as Supervisor for five or six months in the factory. His name was not shown as an employee of the factory in any of the records maintained under the provisions of the Factories Act. He stated that he was not given any order of appointment to work as Supervisor in the factory. He passed 10th Class. He has not technical qualifications. One Narayana and

Subbareddy are the engineers of the factory. Bihar State people are working in the steel factory which is situated at a distance of 2 to 3 kins, from Rajampet. Bihar workers are living in the factory premises. Engineers and others are staying at Rajampet. Prior to his joining as Supervisor in the factory, he was doing agriculture and also giving tuitions to the children. He stated that Nagineni Pullaiah and A2 contested in Sarpanch elections of Vathuluru Gram Panchayat in 1981. A2 was elected as Sarpanch and the said Pullaiah was defeated. This information was elicited to show that Nagineni Pullaiah and PW1 are relatives and there was enmity between Nagineni Pullaiah and PW1 on one side and A2 on the other, due to Vathuluru Gram Panchayat Elections. He stated that he does not know whether the deceased owned a jeep and its driver was Venkataiah. He denied that PW2 related to him, but admitted that he belongs to his village. He stated that he does not know why PW2 came on that day to the house of the deceased. According to PW1, PW2 was a friend of the deceased and they studied together in the primary school. PW2 was doing minor contracts. When the car was stopped, the deceased got down from the car. But the other inmates did not get down. He saw the accused Nos.2 to 7 coming from the cheeki bushes. He further stated that he did not see A2 to A7 emerging from the bushes holding daggers and Natu Tupaki. The accused came walking in speed from the bushes. He stated that they did not go to the police station of Pullampet. Vathuluru is in the limits of Pullampet Mangal. He admits that it is not written in Ex.P1 that A2 stabbed on the back side of the deceased and A1 stabbed on the front of the chest of the deceased. It is written that all the accused surrounded and stabbed. After firing the gun in the air Sesha Reddy fell down. They did not try to give any aid to him to get him up. It is not written in Ex.P1 that Sesha Reddy became unconscious after the gun was fired in the air. By the time himself and Sesha Reddy went to Mannur Police Station, the Police of Pullampet did not come to the scene of offence. By the time they returned to the scene, some Police were present there. There is one Sarasamma, wife of Maruti Venkat of his village. He does not know whether the deceased was having illicit contact with the said Sarasamma.

19. PW2-Rayi Subbarayudu, stated that he is a resident of Lebakavaripalli village. He is doing cultivation and also small contract works. Himself and the deceased studied in the same school. He was studying 4th class and the deceased was studying 5th class. He witnessed the murder of the deceased. According to him on the date of the incident he started at 6.00 a.m. from his house and he reached the house of the deceased by 7.15 a.m. Himself and others, as told by PW1, moved in the car. He stated that A1 gave a signal to stop the car. A2 took out a dagger and stabbed on the backside of the deceased. A1 took out a dagger from his waist and stabbed on the right side of the chest of the deceased. The other accused A3 to A6 also stabbed the deceased. When himself, PW1 and Seshareddy got down from the car to save the deceased, the A7 fired gun (Natu Tupaki) in the air. Then himself and PW1 ran towards Vathuluru. After some time, they returned to Murali Mohan Reddy and found him dead with bleeding injuries.

The father of the deceased fell unconscious. He further stated that after the incident, himself, PW1 ran to the house of the deceased and narrated the incident to PW3. On hearing this, PW3 fell unconscious. In the cross-examination, PW2 stated that he did not work under the deceased. According to him, he was a friend of the deceased. He confirmed the statement of PW1 as to the way in which the deceased attacked by the accused. He further stated that they did not fear any danger even though the accused armed with daggers. They did not try to give any help to Sesha Reddy when he fell unconscious. Before arrival of PW1 and Sesliareddy to the scene of offence, some police persons came there. According to him, he stayed at the scene of offence up to 2 "O" Clock. Then he left for home. He denied that Balakrishna was driving the car at the time of the alleged incident.

20. PW3, Smt. Ambati Arum, wife of the deceased Murali Mohan Reddy, stated that she knows PWs. 1 and 2 and also A2 but not others. She spoke that her husband, PWs. 1 and 2 started in a car to go to the factory. Her husband was driving the car as the driver was staying at Rajampet. In her cross-examination, she stated that she is not a director of the steel factory. According to her, her brother-in-law and sister-in-law are the directors of the steel factory. She stated that the main technicians are from Bihar State. She further stated that her husband had no enmity with A2 or any other persons.

21. PW11, is Dr. A. Govindaiah who conducted autopsy over the dead body of the deceased on 7-06-1992 at 3.30 p.m. According to him he commenced the postmortem examination at 4.00 p.m. On examination, he found altogether 11 injuries on the dead body of the deceased which are as follows:

"1. A horizontal stab injury just below the medial end of right collar bone - Dissection revealed fracture of medial end of right collar bone.

2. A horizontal incised spindle shaped wound over the nape of the neck size 2 cm x 1 cm x 4 cms going obliquely downwards and towards right side. On dissection the underlying short tissue is found cut.

3. An oblique incised spindle shaped injury on the upper and medial border of right shoulder blade size 2 cm x 1 cm x 4 cms going obliquely and medially into the thoracic cavity.

4. An oblique incised spindle shaped injury 4 cms below injury No.3, size 3 cms x. 2 cms x. 2 cms going obliquely downwards towards spinal column into the cavity.

5. An oblique spindle shaped incised wound close to the medial border of left shoulder blade size 3 cms x. 1 cm going downwards and medially into the cavity on dissection medial border of left shoulder blade found fractured.

6. A horizontal incised spindle shaped injury 3 cm below injury No.5. size 5 cms x 2 cms going downwards and medially with 4 cms depth, on dissection T4 vertebra with spinal cord found fractured.

7. A horizontal spindle shaped incised wound on the left back of chest 10 cms below injury No.6, size 5 cms x 3 cms x 4 cms going obliquely downwards and towards spine into the cavity on dissection T6 vertebra with spinal cord found fractured.

8. An oblique spindle shaped stab wound just below the interior angle of right shoulder blade size 3 cms x. 2 cms x. 3 cms going obliquely downwards and medially on dissection underlying muscles and vessels are found cut.

9. A horizontal spindle shaped stab wound 3 cms below injury No.8 size 4 cms x 2 cms x 7 cms. On dissection underlying muscles and vessels are found cut.

10. A horizontal spindle shaped injury just above the left wrist on its dorsal side size 2 cms x 1 cm skin deep.

11. A diffuse contusion 4 cms x. 2 cms over the medial aspect of right elbow is present."

22. The doctor opined that the death of the deceased was due to shock and haemorrhage due to multiple injuries to spine and lungs, Death would have occurred between 6 to 12 hours prior to the examination. Ex.P7 is the post-mortem certificate issued by PW11. According to him, injuries 1 to 10 are possible to cause with sharp edged weapon. Injury No. 11 is possible to cause with blunt object. In his cross-examination, PW11 stated that he did not detect any blood in the mouth or in the trachea. Both the mouth and trachea are found normal.

23. PW14 is one Shaik Haneef who was working as a constable from 1991 to 1994 at Mannur Police Station at the time of the incident. He stated that on 7-6-1992 at 11.00 a.m., he took the FIR in Cr. No.45 of 1992 to the office of the Addl. SP, Dy. SP, CI and to the Magistrate; Rajampet and Cuddapah DCB CI and gave it to them. He went to Rajampet Police Station at about 11.15 a.m. and handed over a copy of the FIR to a constable. Then the CI was out of station. From there he went to the house of Rajampet Magistrate and learnt that the Magistrate was on leave and the JFCM Nandalur was placed in charge. While going to Nandalur near Rajampet Police Station he got information that the Superintendent of Police, Addl. Superintendent of Police, Dy. SP and CI went to the scene of offence. He took a cycle and went to the scene of offence. He did not find any of the officers near the scene of offence. Then he went to Vathuluru and handed over the covers to the Addl. Superintendent of Police and Dy. SP. While returning from there, at the scene of offence, the Sub-Inspector asked him to stay there to take inquest report. The Sub-Inspector, PW15, handed over the cover to him at 3.30 p.m. and asked him to present it before the Magistrate. From there he came to Rajampet at 5.45 p.m. From there he went to Nandalur on a bus and he reached Nandalur by 8.15 p.m. He handed over the covers containing FIR and inquest report to the Magistrate. From there he went to Cuddapah by bus and handed over the cover to Superintendent of Police and Dy. SP and CI. On the next day at 1.00 p.m., he went to Mannur PS and informed

the same to the SHO and PC 1434. In his cross-examination, he stated that according to him, the JFCM Court and the CI Rajampet Police Station are in one compound. While he was returning from the house of JFCM after handing over the FIR to go to Nandalur, he saw some police people standing in front of the Rajampet Police Station. The FIR addressed to the Magistrate was given in a separate cover. The inquest report which was addressed to the Magistrate was also given to the Magistrate in a separate cover. He denied the suggestion that the FIR and Inquest Report were sent to the Magistrate in one cover. He also denied that the FIR and Inquest Report were prepared at Rajampet Police Station between 7.00 p.m. and 7.30 p.m. and were handed over to him to be given them to the Magistrate.

24. PW-15, Md. Shareef, is the SI of Police who stated as to the investigation made by him. According to him, on 7-6-1992 at 9.30 a.m., Ambali Seshareddy came to the Police Station in a jeep and complained about the incident. After registering the case, himself, Head Constable and other staff left to the scene of offence in his jeep along with the complainant. In his cross-examination he stated that there are no gun injuries on the dead body. Ex.P11 is the sketch of the scene of offence. There are no bushes near the banyan tree. The scene of offence falls to the jurisdiction of Mannur P.S. He knows that the JFCM, Rajampet was on leave from 28-5-1992. Exhibit D2 shows the dead body of Murali Mohan Reddy and the car. He stated that he is not aware of the report published in Ex.D1. He denied that the FIR and Inquest Report were prepared between 7.00 and 7.45 p.m. in consultation with the brother of the deceased. He admitted that Ex.P1 is addressed to Pullampet police and then Pullampet police was struck off and addressed to Mannur P.S. The correction made on the complaint was initialled by the complainant. He stated that the complainant Sesha Reddy did not go along with PW15 the superior police officers to Vathiluru stated that in Ex.P1 sketch, the existence of cheeky bushes not stated.

25. PW 16, P. Narayana Swamy, is the Inspector of Police who completed the investigation and laid the charge-sheet.

26. PW17, K. Venkateswara Rao, is the Additional Superintendent of Police at the time of the incident. He stated as to his going to the scene of offence etc. after receipt of information. He denied that the FIR and Inquest Report were despatched after 7.00 p.m. in the police station. According to him on 7-6-1992 he received wireless message from Mannur police station about the incident. He maintained the case diary from 17-7-1992. He denied that he did not receive any express FIR through PC 1249 who came on a bicycle to Vathuluru. He stated that it is not mentioned anywhere that PC 1249 came on a bicycle. There is no record to show that he received the express FIR through PC 1249. Regarding alibi petition, he stated that he received alibi petition through Superintendent of Police, Cuddapah. Ex.P29 is the said petition. With regard to alibi petition, he examined the concerned doctors in S.V.R.R. Hospital. But he did not record their statements. But he did not mention in case diary whom he examined as to alibi.

He stated that enquiry on alibi petition is a part of investigation in the murder case". He did not find it necessary to record the statements of witnesses while making enquiry in the alibi petition. He did not mention in the CD the names of the persons whom he contacted and enquired in S.V.R.R. Hospital. He denied the suggestion that the moment he received Ex.P29, he made up his mind to treat it as false. According to him, S.V.R.R. Hospital Tirupati records shows admission of one K. Brahmananda Reddy from 3-6-1992 to 8-6-1992 in the Cardiology department and his father's name and address etc., were also mentioned. Dr. Swaminanda Gurukul is an M.D. He was on deputation to the cardiology department. He does not know why the name of A11 was removed. He denied that A11 was falsely implicated to threaten him to give evidence against A2. After enquiry in the alibi petition, he submitted his detailed report at Ex.P30 to the Superintendent of Police.

27. DW1, M. Chandra Mouli, is a reporter of Andhra Jyothi Telugu Daily News Paper and resident of Rajampet. He stated to the following effect:

"In the Andhra Jyothi daily at 8-6-1992 in main edition News Item with regard to the murder of Murali Motion Reddy was published with news item dated 7-6-1992. I am writing spot news. I sent a news item to the Andhra Jyothi news paper at Tirupathi for publication on 7-6-1992 with regard to the murder of Murali Mohan Reddy which was published in Page No. 1 and 5 along with the photo of the deceased. I visited the scene of offence where the dead body was lying. I collected the news from Rayi Subbarayudu PW1 and father of the deceased Seshareddy and according to their statements, I sent the newsitems to Tirupathi. Rayi Subbarayudu and Seshareddy stated to me as in Ex.D1 and D2. The S.P. was present in the press conference on the date of murder, but I do not remember the time and the place. I sent the news item to Tirupathi head office published in Andhra Jyothi as Ex.D1 and D2. I sent the photo of the dead body of Murali Mohan Reddy published as Ex.D2".

In his cross-examination, he stated that he has no acquaintance with Rayi Subbarayudu and Seshareddy before he asked them. He has not taken their signature. But whatever they stated he wrote. Ex.DI is the translated version of the news item appeared in Andhra Jyothi News Paper to the following effect:

"Rajampeta, June 7 (Spot News):

Ambati Murali Mohan Reddy, the Congress leader of Pullampeta Mandal, Managing Director of Triveni Steels and the close associate of the Home Minister was murdered horribly at Buggavanka near Vathuluru Agraharam, Pullampeta Mandal on Sunday at 7 a.m. by his rival group who stabbed him with the knives. At the time of murder, Rayi Subbarayudu and Tirupalu, the associates of Murali Mohan Reddy were also travelling by the car. Rayi Subbarayudu told the press that about 11 persons have murdered Murali Mohan Reddy, by stabbing with the knives. Seshareddy, father of Murali Mohan Reddy, stated that Murali Mohan Reddy left of the factory by car with his associates Rayi Subbarayudu and

Tirupalu on Sunday at 6.45 a.m. and on reaching Buggavanka, their political rivals have committed the murder".

Exs.D3 to D7 are portions of statements recorded u/s 162 Cr.PC from PWs.4, 6, 7 and 8 and they were marked to show the contradictions in their statements.

28. In view of the above information, now we have to make a critical and serious analysis of the evidence both oral and documentary to see how far the prosecution has proved its case successfully beyond reasonable doubt.

29. To connect the accused with the murder of the deceased Murali Mohan Reddy, the prosecution tried to attribute motive to A2 and his followers. The motive though some times throws light to connect the accused with the offences alleged, but the same is not decisive. The role of motive in criminal cases is as follows:

30. Motive is one of the circumstances which will give a clue for connecting a particular person to a particular offence. But it is not always a decisive factor. The role of motive for an offence committed depends upon several factors and circumstances of the case. This view of ours is supported by the following decisions as held by the Supreme Court in Pedda Narayana and Others Vs. State of Andhra Pradesh, and Babu Lodhi and Others Vs. State of U.P., .

31. In the case on hand, the prosecution tried to make out a case of motive on the part of the accused to murder the deceased alleging that the deceased was coming up in life, building up his political career and won good reputation in the village. This the group of A2 was not tolerating. As such they nurtured ill-will and hatched conspiracy, To establish conspiracy, prosecution examined PW6, Pattabhi who gave evidence to the effect that five years ago, he saw that A1 to A10 were getting down from the house of A2. To prove this motive the prosecution examined three witnesses namely PWs.1, 2 and 3. PW3 is the wife of the deceased. She stated in her cross-examination that prior to the occurrence or murder her husband had no enmity with A2, Brahmananda Reddy. Whereas PWs 1 and 2 tried to state that A2 was nurturing ill-will against the deceased. The evidence also discloses that A2 had won the election of Sarpanch of Vathuluru Gram Panchayat by defeating one Nagineni Pullaiah who is a relative of PWs.1 and 2.

32. Normally the principles which shall govern the appreciation of evidence are as follows:

1. The burden of proving accusation or a charge against the accused lies on the prosecution.
2. It shall be free from reasonable doubt.
3. If there is a doubt, it is proper to acquit an accused than to punish him, because the well-known principle of criminal jurisprudence is "let several guilty persons shall escape than innocent person is convicted".

4. The proof shall be unequivocal of the accused's involvement.
5. There is no universal rule of appreciation of evidence and it all depends on facts of each case.
6. The cardinal presumption of criminal trial is a person is not guilty unless it is proved his involvement, beyond reasonable doubt.

While evaluating evidence the Courts shall make endeavour to separate the truth from the falsehood. In other words separate grain from the chaff as held by the Supreme Court in the case of Balaka Singh and Others Vs. The State of Punjab, . In appreciating evidence the Courts shall always bear in mind that extra judicial confession and seizure of weapons will not be a substantive piece of evidence. It is unsafe to base conviction on such evidence.

33. While scrutinising the evidence, the Courts must focus its attention on whether there are discrepancies in the evidence, whether the evidence strikes the Court as genuine and whether the story as narrated is probable, judicial approach has to be cautious in dealing with such evidence as held by the Supreme Court in the case of Muthu Naicker and Others Vs. State of Tamil Nadu, .

34. Strong suspicions, however, they are grave, can never take the place of proof. Thus the burden of proving the guilt of the accused is upon the prosecution. When the prosecution fails to establish a case against the accused; beyond reasonable doubt, the benefit of doubt must go in favour of the accused. While considering the evidence, it is the duty of the Court to see how far the witnesses are honest and speaking the truth. It is not the duty of the Court to impute its personal knowledge or develop "the story different from the one set up by the prosecution. It shall consider the entire evidence. The entire evidence has to be appreciated in its totality and not in isolation. If a part of the prosecution story found doubtful the same does not falsify the whole account. The duty of the Court is to eschew the doubtful evidence and examine the other evidence carefully. If evidence given in respect of several accused but some are acquitted, there is no hard and fast rule that others shall be acquitted. But if the entire evidence is integrally related, it is not possible to disengage the truth from the falsehood, if that is ended in acquittal of one accused, the same shall apply to others as is held by the Supreme Court in the case of Phanindra Prasad Shukla and anr Vs. State of Madhya Pradesh, .

35. Where there are more than one accused, the duty of the Court is to deal with the evidence of each witness separately and as certain and give a finding as regards the act or acts proved to have been committed by each of the accused. If evidence against all the accused is same, but some are acquitted, then the other accused are also entitled for acquittal. If an accused is not charged for a substantial offence but on scrutiny of evidence found that he committed an offence other than the one he is charged, then he may be convicted for such an independent offence. It shall see that what is proved in respect of each accused amounts what offence as held by the Supreme Court in the case of Soma Bhai

Vs. State of Gujarat, . But the same evidence not accepting against some accused, but making use of against other accused is not permissible as held by the Supreme Court in the case of Baikuntha Nath Choudhary v. State of Orissa, AIR 1973 SC 2337. Evaluation of evidence of both prosecution and defence shall be by the same yardstick. Discrepancies and contradictions in the statement of witness will play an important role to test the credibility and reliability of a particular witness. To test the credibility and reliability of witness, some times the Court shall take into consideration the facts and circumstances of a specific case, the character, knowledge, social and economic background of a witness coupled with the degree of discrepancies and contradictions. Minor discrepancies and contradictions, which are minor in nature and do not shake the veracity of the witnesses, be ignored, as held by the Supreme Court in State of Rajasthan Vs. Smt. Kalki and Another, , reiterated in Maqsoodan and Others Vs. State of Uttar Pradesh, .

36. In a case of group rivalry when the enmity between the prosecution witnesses and the accused are proved and when the version given by the eye witnesses regarding occurrence is verbatim the same and even contradictions and omissions are the same then it is not safe to convict the accused. As far as possible the Court shall avoid while evaluating the evidence on hyper-technical approach to the case. When there is variance in the statement made by the witnesses at the time of investigation and made before the Court, such an evidence shall be considered by the Court with all care and caution. Whatever evidence is produced, it shall analyse in a proper perspective. Its approach shall be to weigh the evidence and not to count it. Because in a case of group rivalry, it is natural for the parties to rope as many innocent persons as possible or to exaggerate certain circumstances or even to state untruth. In such circumstances, it is the duty of the Court to weigh the evidence on qualitative aspect but not on quantitative and order conviction against those persons who have actually involved in the offence alleged as held by the Supreme Court in Ferjaud Ali v. State of U.P., 1983 SCC 176 and Sherey and others Vs. State of U.P., .

37. The evidence given shall be natural, reasonable and acceptable. Statement of each witness shall be corroborated by other evidence. If there are more than one witness and the evidence given is of different in nature, the same shall be free from doubt. If the Court feels that evidence of a witness consists of both acceptable and unacceptable portions, it shall evaluate with all scrupulousness and pick up only that portion which stands to reason. Moreso where there are more than one accused. Thus, when the evidence consists of both probabilities and improbabilities and definiteness and exaggeration also not free from discrepancies and artificiality, the duty of the Court shall be to separate the truth from falsity, as held by the Supreme Court in Gurcharan Singh and Another Vs. State of Punjab, and also in Pedda Nariah 's case (supra).

38. In the case on hand, a strict scrutiny of evidence of PWs 1 and 2 reveals as

under:

PWs 1 and 2 admitted that one Mr. Balakrishna was the driver of Ambassador car and Venkataiah was the driver of the jeep owned by the deceased. On the date of the incident even before taking breakfast, the deceased started to go to factory at 7.15 a.m. PWs.1 and 2 are residents of Labakavaripalli and they reached the premises of the deceased so early. DW1 is one Chandra Mouli, a reported of Andhra Jyothi, a Telugu Daily News paper, is an independent witness and is a journalist. He stated that he recorded the statement of Ambati Sesha Reddy on 7-6-1992 and the same was published in Andhra Jyothi paper on 8-6-1992. He recorded the statement at Ex.D1 stating that the deceased left in the company of Tirupalu and Rayi Subbarayudu. In Ex.D1, there is no mention as to late Sesha Reddy accompanying the accused. In the said news item, names of the accused not mentioned. It is mentioned that 11 persons murdered the deceased. It is stated that political rivals murdered him. If Sesha Reddy had also accompanied, his name also would have been figured in Ex.D1.

39. PWs.1 and 2 deposed as to the place of offence and how the attack took place. The same has also been mentioned in Ex.P1. No witnesses stated that when the attack started, either the deceased tried to escape from the alleged assault or the other persons who were accompanying in the car tried to interfere to ward off the attack to protect the deceased. In Ex.P1, it is mentioned that the incident took place near a stream. No mention of cheeky bushes is there in Ex.P1. From PW7 the prosecution tried to elicit that 5 years ago while he was going towards Pullampet. This statement was with a view to probablise that A8 to A10 were present near the scene of offence and fled after the incident. Prosecution made PW8 to give evidence to the effect that 5 years ago, he saw A2, A8 to A10 going in a jeep to Tirupathi at 9 a.m. or 9.30 a.m. while he was standing at Settigunta bus stop.

40. The version of PWs 1 and 2 that A7 fired gun in the air is difficult to believe as there are no pellets marks on the floor. Had the father of the deceased after seeing the incident fallen down, PWs1 and 2 would not have run away from the scene of offence. On the other hand, they would have tried to go to the rescue of late Sesha Reddy. Sesha Reddy in his complaint at Ex.P1 has not stated that he fell unconscious. There is no mention as to PWs1 and 2 running away towards the village leaving the father of the deceased. There is no explanation that why there was no attempt on the part of the witnesses or late Sesha Reddy to take the deceased who was injured to the hospital with a view to save his life. On the other hand, they discarded the deceased and ran away from the scene of offence. Another infirmity is that in the FIR it is not mentioned that the deceased died instantaneously. If FIR is not free from falsity, then full reliance is not warranted. This view of ours is supported by the decision of the Supreme Court in Meharaj Singh (L/Nk.) Vs. State of U.P., wherein the Supreme Court at para held as follows:

"It appears that it was a blind murder and none of the eye witnesses were

actually present at the scene. The ante timing of the FIR was obviously made to introduce eye witnesses to support the prosecution case. We may demonstrate this by noticing that though PWs Suit. Kamlesh, the widow of the deceased claimed that she was present with her husband at the time of the occurrence, her conduct was so unnatural that not only she did not try to save her husband by trying to provide a cover but even after her husband fell down and was inflicted repeated injuries with the knife by the appellant Meharaj Singh, she did not even try to go anywhere near her husband and even later on hold his head in her lap and try to provide some comfort to him. This becomes obvious from the absence of any bloodstains on her clothes. She admitted that she had not even received a scratch during the occurrence. In a situation like this, the normal conduct of any wife would be firstly to make an effort to save her husband even by taking the elbow on herself and if that is not possible then at least to go to close to his person, at least after the assailants had left that there would be no escape from the blood oozing out of the injuries of the deceased to come on to her clothes. Similar criticism is also available against Balbir PW2, Shiv Charon PW4 and Satkari PW5. It is not the case of the prosecution that the clothes of any of them had got bloodstained. The very fact that none of these witnesses went to lodge a report and instead left it do the father of the deceased to lodge the FIR would also go to show that the witnesses in all probability were not present at the spot. The absence of any blood in the field of Kirpal Singh as also the absence of blood trail from the field of Kirpal Singh to the place where the dead body was found, as admitted by PW8, also suggests that the occurrence did not take place in the manner suggested by the prosecution and the evidence of Dr. Pande who conducted the postmortem examination showing that the stomach contained partially digested food material weighing about 150 gms and concluding therefrom that the occurrence must have taken place between 9.00 a.m. and 9.30 a.m. if the deceased had taken his food at 7.00 a.m. would also throw a doubt on the correctness of the prosecution version which alleged time of occurrence as 11.30 a.m., presumably to lend an assurance that PWs.2, 3, 4 and 5 were present in the field at that time. The evidence of Dr. Pande also to the effect that he had found incised injuries on the deceased including a L snapped injury (injury 11) and a semi-circular injury (injury 18) is indicative of the fact there these two injuries were caused with different weapons and looking to the nature of the other incised wounds present on the deceased, the possibility that three types or sharp-edged weapons were used cannot be ruled out. That being the position, it is obvious that the ocular testimony does not fit in with the medical evidence and instead it contradicts it".

41. Whenever overt acts on several accused are alleged, it is the duty of the Court to observe that the overt acts attributed against the accused must be corroborated with the medical evidence as held by this Court in the case of B. Honurappa v. State of A.P. 1969 (2) ALT 200; V. Sathayamatah v. State of A.P. 1978 (1) APLJ 83; and the Supreme Court in Baul and Another Vs. State of U.P., and Bawa Singh Vs. State of Punjab, .

42. If there is any conflict between the ocular evidence and the medical evidence normally the medical evidence shall prevail. In other words, if there is any difference in the evidence as to the injuries caused by the alleged overt acts spoken to by the witnesses and the evidence given by the doctor. It is not safe and proper to base conviction on such inconsistent evidence. On the other hand, the benefit of doubt shall be extended to the accused as held by the Supreme Court in Mohar Singh and Others Vs. State of Punjab, and Milkiyat Singh and Ors Vs. State of Rajasthan, .

43. In the case on hand, the overt acts explained by PWs1 and 2 are to the effect that A2 stabbed on the back with a dagger. A1 stabbed with a dagger on the right chest and A3 to A6 also stabbed the deceased. A7 fired his gun in the air to disperse the witnesses and late Sesha Reddy. Injuries found on the body of the deceased are explained in the post-mortem report at Ex.P7 issued by PW11. According to PW11, injury No.11 is caused by a blunt object like stick or stone. Out of the other ten injuries injury Nos.2 to 9 are on the back of the deceased within close proximity. According to PW11, if a person who is unarmed tries to protect himself whenever he is attacked with weapons will sustain injuries on his palms and fingers which are called defence injuries. But no such defence injuries were found on the deceased. The occurrence of injury No. 11 was not satisfactorily explained by the prosecution as the witnesses spoke that the weapons used by the accused are daggers while injury No.11 is possible only by a stick or stone. If really four persons A3 to A6 had attacked the deceased indiscriminately the injuries would have been more than 11.

44. It is very significant that the time of death of the deceased was not mentioned in Ex.P1. Regarding time of death of the deceased, PW11 the doctor stated as follows:

"I am of the opinion that the deceased would appear to have died of shock and haemorrhage due to multiple injuries to spine and lungs. Death would have occurred about 12 hours prior to postmortem examination. I have issued the certificate Ex.P7. The death would have occurred between 6 to 12 hours before P.M. examination.

I did not detect any blood in the mouth or in the trachea. Both the mouth and trachea are found normal. Having regard to the fact that the deceased is well built, well nourished and he was aged about 32 years, having regard to the fact that there were no injuries on vital organs like head, brain, heart, kidneys, and major arteries. No injuries to the stomach. It would expect to survive deceased normally for atleast 2 to 3 hours after receipt of the injuries. Normally a person who is unarmed tried to protect himself whenever he is attacked with weapons he sustains injuries on his palms and fingers, such are described as defence injuries. I did not find any such injuries. Injury No.2 is on the nape of the neck i.e., on the back of the neck. Injuries 2 to 9 are on the back of the deceased with close proximity".

The trial Court committed a mistake in not accepting the evidence of the doctor who is an expert. The post-mortem certificate reveals that there was no blood in the mouth or in the traches and the doctor did not find any profound haemorrhage. The correctness of the testimony of PW11 cannot be doubted or discarded. Thus there is contradictions in the evidence of the ocular and medical evidence.

45. There is also attack by the defence as to the correctness of the FIR, genuineness in conducting the investigation and in laying the charge-sheet. Regarding FIR it is stated that it is not a conclusive piece of evidence and the contents therein need not be an encyclopedia. But it plays an important role in throwing light on the evidence. If there is any delay in sending the FIR the same should be properly explained by the prosecution. The delay in lodging the FIR may weaken the prosecution case. Further the evidence of eye-witnesses if differs on some important particulars given in the FIR and the same do not inspire confidence then it creates doubt as to the story of the prosecution. This view of ours is supported by the Supreme Court in the decision in Ishwar Singh Vs. State of U.P., .

46. According to the prosecution, the incident took place at 7.30 a.m. on a State High Way namely Buggavanka of Cuddapah district. On this route number of buses ply throughout day and night. The scene of offence is 11 kms away from Mannur P.S. Mannur is rural police station of Rajampet. Nandalur is 10 kms away from Mannur P.S. Buses ply very frequently from Mannur to Nandalur etc. PW 17 K. Venkateswara Rao, Dy. S.P. stated that there is regular traffic on the route. The scene of offence is 11 kms away from Mannur P.S. All these places are covered by plying number of buses frequently. According to the prosecution, PW17 received information as to the occurrence at Cuddapah by 10 a.m. PW15 is the Sub-Inspector of police of Mannur P.S. on the day of occurrence. He stated that on 7-6-1992 at about 9.30 a.m. late Sesha Reddy came to the police station along with PW1 and informed about the occurrence of the offence. According to him PW1 drafted the complaint Ex.P1 to the dictation of Sesha Reddy and handed over the same to him at 10 a.m. Then he registered a case and issued Ex.P9 FIR. The same was handed over to PW14, the constable to deliver it to the Magistrate before 11.00 a.m. PW15 stated that PW1 the father of the deceased Sesha Ruddy came to the police station in a jeep. Whereas PW1 in his evidence stated that himself and the father of the deceased Sesha Reddy went by an RTC bus. The FIR was registered at 10 a.m. and it reached the Magistrate at 8.15 p.m. The attempt on the part of PW15 to explain the delay is not satisfactory because PW14 himself admitted that for every half an hour there is a bus from Nandalur. He did not take any bus warrant. According to PW14, it took one hour and fifteen minutes for him to reach Rajampet to hand over the FIR. Rajampet is very nearer to the place of occurrence. If there was no delay, the FIR would have reached the Magistrate at 12.30 hours. Another strange thing to disbelieve the theory of PW14 is that he hired a bicycle at Rs.2/-per hour to hand over the FIR. When number of buses were plying there was no reason why PW14 had to take

the bicycle on hire. There is no mention in the First Information Report that PW14 covered the distance with a bicycle. According to PW11, post-mortem was over by 5.45 p.m. According to PW13 the dead body was handed over to him after post-mortem examination around 5 or 5.30 p.m. According to the prosecution PW14 left by bus and reached Nandalur 8.15 p.m. to handover the FIR to the Magistrate. But this version of PW14 is falsified by PW13 who stated in his cross-examination as follows:

"On that day the complainant came in a jeep to the police station. Myself and other four police constables along with S.I., in the same jeep went to the scene of offence. The police constables accompanied me are 704, 1764 and 1765 and 1014. We reached by 11.00 or 11.30 a.m. to the scene. Myself and other constables were stayed at the scene of offence till the inquest was over. During that period I was there the DSP or SP did not come to the scene. By the time we reached the spot Pullampet police were present. In another jeep of the complainant, the dead body was taken to hospital. After post-mortem examination the dead body was handed over to me at 5.00 or 5.30 p.m. PC 1249 came to the scene just before the completion of the inquest. He alone came to the scene from police station, Mannur. He came there in the vehicle of complainant".

47. The statements of witnesses and the time of delivering the FIR creates suspicion. As to the importance of FIR, the Supreme Court in the case of Mohar Singh (supra) at Para 12 held as follows:

"FIR in a criminal case and particularly in a murder case is a vital and a valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the Courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report prepared u/s 174 Cr.PC is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements

recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and has not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then anti-timed to give it the colour of a promptly lodged FIR. In our opinion on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been anti-timed and had not been recorded till the inquest proceedings were over at this spot by PW8.

While observing thus, the Supreme Court acquitted the accused.

48. The above evidence convinced us that the prosecution tried to implicate as many accused as possible in the offence alleged including some innocent people. If the rote played by each accused is tested in the light of the evidence given, the said evidence suggests two views - one is the innocence of some of the accused and the other is their involvement. As far as the role played by A1 is concerned, no discussion is warranted now as he died during the pendency of the trial.

49. As far as A2 is concerned, he pleaded alibi. When alibi is pleaded on whom the burden lies? The plea of alibi is a right available to the defence. The purpose of pleading alibi is to convince the Court that on the date, time and place of occurrence of offence it was physically impossible for an accused to be present at the time, date and place as he was far away from such a place. The standard of proof, in the case of alibi, is the same as in prosecution's evidence. Even in the case of alibi, if the Court finds that the theory of prosecution is weak, the alibi can be ignored and acquittal be ordered extending the benefit of doubt to the accused. When once the alibi is pleaded by the accused by giving evidence either by himself or through his witnesses, the burden shifts on the prosecution to establish it by giving such an evidence which must be convincing, satisfactory and deserves to be accepted by the Court. Thus the greater responsibility will be on the prosecution as held in the following cases. In Chandrika Prasad Singh and Others Vs. The State of Bihar, ; Soma Bhai Vs. State of Gujarat, ; State of Haryana Vs. Sher Singh and Others, and State of Uttar Pradesh Vs. Sughar Singh and Others, .

50. Even in Law of Indian Evidence, Woodrooffe and Amir Ali, the view of the author are as follows:

"There is some conflict as to the burden and degree of proof of the defence or claim of alibi. Some of this conflict may undoubtedly be explained in terms of overlooking the distinction between the burden of proof and the burden of going forward with the proof. In view of the fact that the burden of presenting proof of a fact peculiarly within a party's knowledge may be placed upon that party, it is proper to hold that the defendant must in the first instance give evidence in support of his claim alibi. The matter is to a large degree academic because, in spite of variant forms of expression, it is generally held that the ultimate burden

of proving the presence of the defendant at the scene of crime at the time of its commission upon the prosecution rather than that the ultimate burden is upon the defendant to show that he was at another place. It is generally held sufficient for the defendant to raise a reasonable doubt of his presence at the scene of the crime at the time that it was committed. It is not incumbent upon the defendant to prove his alibi beyond a reasonable doubt nor by a preponderance of the evidence."

It is also generally held that an acquittal is required if the jury have reasonable doubt upon consideration of all the evidence that offered by the prosecution to show that the defendant's presence and the participation in the alleged crime, and that offered by the defendant to prove his presence elsewhere. All the evidence in the case is to be considered together. The jury are not to weigh merely that relating to the alibi, and defence from that alone whether they have a reasonable doubt of guilt. Thus they must acquit even though the evidence to prove the alibi may be insufficient of itself to establish the same affirmatively as a separate fact, if when considered with all the other evidence it raises a reasonable doubt. Conversely, the jury cannot acquit the defendant on the ground that the alibi evidence considered by itself raises a doubt.

In proving this alibi the defendant is not required to cover the exact time or every minute of the time involved in order to sustain his defence. Inadequacy of the evidence is not sufficient to exclude its consideration, as the final question of its sufficiency to raise a reasonable doubt is for the jury to determine from all the evidence".

51. Thus when alibi is pleaded, the burden of proving the special defence of alibi initially will be on the accused setting it up. But even so, the burden of proving the case against the accused is on the prosecution, irrespective of whether or not the accused have made out a plausible defence. It is sufficient for the accused to lead such evidence which creates reasonable doubt as to the possibility of his being present at the spot as held by the Supreme Court in "Gurucharan Singh" case (supra).

52. What is all required is that alibi shall be pleaded at the earliest point of time and it shall cover the time of the alleged offence. In the case of Chandrika (supra) the Supreme Court held that initially the onus to establish alibi is on the accused. If the plea of the accused is supported by some material on record, that, coupled with other facts and circumstances, will be enough to give benefit of doubt to the accused, even though the plea is not proved to the hilt. But if the defence of alibi completely broken down, an inference arises against the accused that probably he was where the prosecution alleges him to be. Even the evidence to prove alibi is insufficient to establish affirmatively, however, if the entire evidence considered raises a reasonable doubt, such doubt shall be extended in favour of a person who pleaded alibi.

53. PW17 investigated into the plea of alibi pursuant to Ex.P29, a representation

given by A2 pleading alibi. Officers report is at Ex.P30. He stated on oath that he examined the concerned doctor of SVRR Hospital, Timpati. But he did not record the statement of the doctor. He admits that enquiry on alibi petition is a part of investigation in a murder case. But according to him, he found it not necessary to record the statements of witnesses while making enquiry on alibi petition. Dr. S.M. Swaminath Gurukul, M.D. of SVRR Hospital was also made as accused No. 11 in this case. But no steps were taken to examine the said doctor. It shows that the prosecution left him as they were sure that the alibi plea of A2 has to be accepted as true. Thus, the prosecution failed to establish its case as to the involvement of A2 in the offence alleged beyond reasonable doubt.

54. When can it be said the case is proved beyond reasonable doubt has been held by the Supreme Court in the case of Vijayee Singh and others Vs. State of U.P., , as follows:

"The general burden of establishing the guilt of accused is always on the prosecution and it never shifts. Even in respect of the cases covered by Section 105 the prosecution is not absolved of its duty of discharging the burden.

The presumption regarding the absence of existence of circumstances regarding the exception can be rebutted by the accused by introducing evidence in any one of the manners mentioned above. If from such a rebuttal a reasonable doubt arises regarding his guilt, the accused should get the benefit of the same. Such a reasonable doubt consequently negatives one or more of the ingredients of the offence charged, for instance, from such a rebuttal evidence, a reasonable doubt arises about the right of private defence then it follows that the prosecution has not established the necessary ingredient of intention to commit the offence. In that way the benefit of a reasonable doubt which arises from the legal and factual considerations even u/s 105 of the Evidence Act should necessarily go to the accused".

55. The role played by A7, according to the prosecution, is that he fired gun in the air and on hearing the sound of gun shot, the witnesses ran away from the scene.

56. As already observed above, when the prosecution story creates two views possibly of one indicating conviction and the other supporting acquittal, the later view be accepted as held by the Supreme Court in Awadesh v. State of M. P.

57. The critical scrutiny of evidence, as discussed above has compelled us to reach the conclusion that appreciation of evidence by the learned Sessions Judge to convict all the accused for the offences alleged against them not satisfactory and correct. The motive alleged by the prosecution was not established so also conspiracy. In the complaint that was given to the police, there is no mention as to how the attack took place. The evidence of eye witnesses shows that the deceased Murali Mohan Reddy died immediately after the attack. But the doctor PW11 who conducted autopsy over the dead body of the deceased opined that the deceased might have died two hours after the attack. According to PW11,

injury No. 11 was caused either by stick or stone whereas the witnesses stated that the deceased was attacked with daggers. Holding of sticks or stones was not attributed to any of the accused. Then inference will be that there were other persons apart from accused near the scene of offence and they might have participated in the attack. The prosecution stated that accused Nos.8 to 10 were waiting at the scene of offence and the accused were flowing in a jeep. But the learned Sessions Judge acquitted A8 to A10.

58. Since the evidence is peculiar in nature the Court has to adopt the theory of separating the grain from the chaff. In other words to accept the evidence which is convincing and to exclude the evidence which looks artificial. If the above principle is adopted one can draw an inference that the entire attempt of the prosecution was to somehow connect some innocent persons as accused. It is clearly established in making accusation against A2 and A7.

59. When PW3 stated that there was no ill-will between the accused led by A2 and her husband late Murali Mohan Reddy, it is difficult to believe the theory of the prosecution that A2 hatched up a plan to finish the deceased.

60. Regarding alibi, A2 produced some material to show that he was admitted to S.V.R.R. Hospital, Tirupali on the complaint of cardiac trouble for a day and later he was shifted from intensive unit. The prosecution disputed the alibi stating that A11, the doctor, to that hospital might have created the documents. If their suspicion was really genuine, there was no reason for them to give up A11 subsequently. When once admission of A2 is shown and the treatment sheets and other information as to giving medical aid to him have been produced, the presumption is that on the date of the incident A2 was in the hospital. In other words he was not present at the scene of offence on the date, time and place of offence. Under these circumstances, the burden was very heavy on the prosecution which it did not try to discharge. On the other hand, the prosecution had given up A11, the doctor of SVRR Hospital. If the doctor was examined, the reality or otherwise as to the alibi pleaded would have been known. Thus, the prosecution failed to discredit the plea of alibi. The principles on the plea of alibi and its proof apply to the circumstances existing in the case on hand. Therefore, we have to hold that the alibi pleaded by A2 is established.

61. In view of the above circumstances, participation of A2 in the offence alleged has to be completely excluded by accepting the alibi pleaded which is further supported by PW3 statement who stated that there was no ill-will between her husband and A2. A7 also cannot be connected to the incident alleged as there is no definite proof as to his participation. If the role of A2 and A7 is excluded then the other accused remained to be considered are A1 and A3 to A6. According to the prosecution, A1 stabbed the deceased with a dagger on the right side of the chest of the deceased while A3 to A6 stabbed the deceased with daggers. But A1 died during the trial of the case. Though it is stated that A3 to A6 stabbed the deceased with daggers, but it is not stated as to the specific overt acts of each accused, namely who stabbed and on which part of the body of the deceased.

From the above, it is difficult to say that which injury was the immediate cause for the death of the deceased. It has come in the evidence of the doctor that the cause of the death of the deceased was due to shock and haemorrhage due to multiple injuries caused. Under these circumstances, it is not proper to convict A3 to A6 for the offence punishable u/s 302 IPC. However, these accused deserves to be punished for the offence u/s 304 Part-11 read with Section 149 IPC.

62. Accordingly, the conviction and sentence ordered by the learned II Additional Sessions Judge, Cuddapah in SC No.5 of 1994, dated 27-2-1998 set aside and in their place now it is ordered that the Criminal Appeal No.408 of 1998 filed by A2 is allowed and he is acquitted of all the charges levelled against him. Criminal Appeal No.409 of 1998 filed by A3 to A7 is allowed in part acquitting A7 of all the charges levelled against him while convicting A3 to A6 for the offence punishable u/s 304 Part-II IPC and sentencing them to undergo Rigorous Imprisonment for a period of four years and also to pay a fine of Rs.5000/- (five thousand) each in default to suffer rigorous imprisonment for one year. A2 and A7 shall be set at liberty forthwith if they are not required in any other crime.