

(2013) 10 SC CK 0037

In the Supreme Court Of India

Case No : Criminal Appeal No's. 1521-1522, 1102-1103, 1100-1101 and 1093-1094 of 2011

Putchalapalli Naresh Reddy

APPELLANT

Vs

State of A.P. and etc.

RESPONDENT

Date of Decision : 18-10-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162, 164, 235(2)
Evidence Act, 1872 — Section 155, 157, 164, 32
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2013) 11 AD 89 : (2014) 1 ALD(Cri) 793 : (2014) 84 ALLCC 755 : (2013) ALLMR(Cri) 4117 : (2014) CriLJ 743 : (2013) 13 JT 557 : (2014) 1 NCC 291 : (2014) 1 RCR(Criminal) 613 : (2013) 12 SCALE 691 : (2014) 2 SCJ 446

Hon'ble Judges : Sharad Arvind Bobde, J; Balbir Singh Chauhan, J

Bench : Division Bench

Advocate : A.K. Sanghi, Mahabir Singh and Altaf Ahmed, V. Sridhar Reddy, P. Ganga Rami Reddy, V.N. Raghupathy, Abhijit Sengupta, V. Sridhar Reddy and Ch. Leela Sarveswar, for the Appellant; A.T.M. Rangaramanujan and Basava Prabhu Patil, D. Mahesh Babu, Mayur R. Shah, Suchita Hrangkhwal, Chandra Mohan Anisetty and T. Anamika, for the Respondent

Final Decision : Allowed

Judgement

S.A. Bobde, J.—This batch of appeals is preferred by the accused against the common judgment and order dated 23rd March 2004 in Criminal Appeal Nos. 954 and 956 of 2008. Criminal Appeal Nos. 1521-1522 of 2011 are filed by the Accused No. 1; Criminal Appeal Nos. 1102-1103 of 2011 are filed by the accused Nos. 2-7; Criminal Appeal Nos. 1100-1101 of 2011 by the accused Nos. 8-12; Criminal Appeal Nos. 1093-1094 of 2011 are filed by the Accused No. 2, Konduru Nagure Reddy. Since they arise out of the same incident/judgment they have been taken up together for disposal.

2. The crime in question is the murder of Mudi Parandhami Reddy in an agricultural field on 25.11.96 in Mettu village in Andhra Pradesh. According to the

prosecution, the deceased was a leader of the Congress party in the area. He was suspected by the Accused No. 1 Puchalapalli Parandhami Reddy, a leader of the Telugu Desam Party, as being responsible for the murder of his father on 25.3.92. Land disputes also existed between Rajagopal Reddy (L.W. 2), his brother Pelluru Murali Reddy (P.W. 3) on one side and A-19, Pelluru Venu Reddy about the division of survey No. 116. Litigation was pending between them in a Court. Therefore, Pelluru Murali Reddy (P.W. 3) and Rajagopal Reddy (L.W. 2) sought the mediation of the deceased Mudi Parandhami Reddy and it was decided that the deceased would mediate on 25.11.96.

3. On 24.11.96, Pelluru Murali Reddy (P.W. 3) and his brother Rajagopal engaged farm labour i.e. P.W. 1 (Vakati Ramanaiah), P.W. 2 (Rayapati Venkata Ramanaiah), P.W. 4 (Bandila Mutyhyalaiah) and P.W. 5 (Rayapati Kotaiah) for ploughing the land. On the next day, i.e. 25.11.1996 the deceased had come to the land and sat on a ridge in the field while the ploughing was going on by the labourers. Around 8.00 a.m., A-19, Pelluru Venu Reddy and A-20, Pelluru Sreedhar Reddy came there and asked that the ploughing be stopped because there was a dispute over the land. Mudi Parandhami intervened and said that the dispute will be resolved later and asked the ploughing to go on. At this the accused went away. Around 10 a.m. the accused party came back. The accused No. 1 hacked Mudi Parandhami with a battle-axe on the head. After that A-2, Konduru Nagure Reddy came and when Pelluru Murali Reddy (P.W. 3) intervened, A-2, Konduru Nagure Reddy, hit him with the blunt edge of the chilla kathi. Then A-3, Konduru Dayakar Reddy, hacked Mudi Parandhami with an axe on his head. When Pelluru Murali Reddy (P.W. 3) intervened, A-3, Konduru Dayakar Reddy, hit him on the left hand. After this A-4, Konduru Ramachandra Reddy, came and stabbed Mudi Parandhami on his left shoulder. A-5, Putchalapalli Ramamohan Reddy, then stabbed mudi Parandhami on his chest. A-6, Putchalapalli Srinivasulu Reddy, then stabbed Mudi Parandhami with a spear on the left side of his back. Thereafter A-7, Putchalapalli Niranjana Reddy, stabbed Mudi Parandhami on his back. Then A-8, Avula Sudhakar, stabbed Mudi Parandhami on his left ear and his abdomen. Thereafter A-9, Putchalapalli Subrahmanyam Reddy, stabbed Mudi parandhami on the left side of the chest. A-10, Yellasiri Masthan, then hit Mudi Parandhami with a stick on the left temple. A-12, Chennur Venkataramana Reddy, gave a blow on the head to Mudi Parandhami. When Rajagopal Reddy Rajagopal Reddy (L.W. 2), intervened A-12, Chennur Venkataramana Reddy hacked him on the head with the same battle axe and felled him. In the incident Mudi Parandhami Reddy died. P.W. 3 (Murali Reddy) L.W. 2 (P. Raja Gopal Reddy) and L.W. 3 (Pelluru Karunakar Reddy) were injured.

4. Since no doctor was available at Vakadu, one Subrahmanyamm Reddy brought a car and Veluru Gopal Reddy, P.W. 6, Pelluru Murali Reddy P.W. 3 took him in the car to the Government Hospital, Gudur. However, since his condition was critical the hospital authorities advised them to take him for special treatment to Tirupati. On 26.11.1996 the Additional District Munsif, Tirupati recorded the Dying Declaration of P.W. 2 - P Rajagopal Reddy (the injured) at the Government

Hospital, Tirupati. P.W. 17, K. Bala Reddy, Inspector of Police, Vakadu conducted inquest over the body of the deceased Mudi Parandhami Reddy and sent his body for post mortem to the Government Hospital, where PW 13, Dr. M.C. Narasimhulu, conducted post mortem over the body of the deceased.

5. First Information Report was lodged after about seven hours. The Investigating Officer, Mr. K. Prasad Rao, P.W. 14, recorded the statement of Pelluru Murali Reddy (P.W. 3) at the Government Hospital, Gudur and registered Crime No. 175 of 1996 and recorded the confession of accused No. 2 (Konduru Nagure Reddy) and recovered M. Os 1 to 10. Rest of the investigation was conducted by K. Bala Reddy (Inspector of Police), P.W. 17. The post mortem was conducted by Doctor M.C. Narasimhulu (P.W. 13). The wound certificate showed the following ante-mortem injuries:

(1) A bone deep lacerated injury of about 3" x 1/2" extending from middle of skull to the left parietal bone. Blood stains present with congestion. Deeper to it sub scalp congested and dark. L shaped fracture of skull in mid line for about 3 1/2" and to the right side of parietal bone. Brain coverings congested and dark. Subdural hematoma present over the middle of brain. Brain matter congested and dark. There is basal fracture of skull transversely from one petrous part of the bone to the other and fracture of right parietal bone, blood clots and congestion present over the base of skull and at the fractured areas. Injury is ante mortem.

(2) Swelling over right fronto parietal area of skull. Deeper to it sub-scalp congested with dark blood clots. Injury ante mortem.

(3) Cut injury cartilage deep of about 1" over the upper part of helix of left ear present. Blood stains present with congestion. Injury is ante mortem.

(4) Skin discoloured dark with swelling over left parotid region and a part of left face. Deeper to it dark blood clots with congestion present. Injury is ante mortem.

(5) An incised injury of about 2 1/2" x 1/2" x unknown depth in between 3rd and 4th intercostals space just medial to the mammary plane. Blood stains and congestion present. Deeper to it fracture of 3rd rib, severing the 3rd intercostals space entering the thoracic cavity injured irregularly left lung by cutting irregularly and injured the anterior part of heart muscle opening the heart chambers (auricle and ventricle) for about 2 1/2". Blood clots and congestion present at the intercostals region, over the lung injury and over the heart. Injury ante mortem in nature.

(6) Another incised injury of about 2" x 1/2" x unknown depth over the 4th intercostals area just medial to mammary plane on left chest. Blood stains and congestion present. Deeper to it the 3rd intercostals space opened and left 4th rib fractured and entered the thoracic cavity. Congestion and blood clots present at the fractured site and intercostals area. Injury is ante mortem in nature.

(7) A cut injury bone deep of about 2" x 1/2" over the 5th intercostals space in the left anterior axillary line. Blood stains and congestion present. Injury is ante mortem.

(8) Another cut injury bone deep of about 1 1/2" x 1/2" over the 7th left intercostals space in the anterior axillary plane. Congestion and blood stains present. Injury is ante mortem.

(9) Another cut injury bone deep of about 2 1/2" x 1/2" in the mid axillary line on 5th left intercostals space. Blood stains and congestion present. Injury is ante mortem.

(10) Cut injury skin deep of about 1/2" x 1/2" in 7th left intercostals area in the axillary plane. Blood stains and congestion present. Injury is ante mortem.

(11) Another cut injury of about 1/2" x 1/2" skin deep just below the above injury.

(12) Another cut injury of about 2" x 1/2" x unknown depth over the lower aspect of back of left chest present. Internally the last rib fractured on the back in the posterior mid line on left side entering the abdominal cavity and injured the left kidney for about 3/4. Congestion and blood clots present over the injured areas internally. Thoracic cage contained clotted blood for about 1 1/2 liters. Blood clots also present in abdominal cavity. Injury is ante mortem.

(13) Another cut injury bone deep of about 1 1/2" x 1/2" over the line on lumbar area. Blood stains and congestion hyoid bone, normal. Neck tissues normal. Stomach contains of about 1 oz of coffee coloured fluid. Genitals normal. Intestines normal.

The doctor opined that the deceased died due to shock from head injury and injury to the brain and heart and other multiple injuries and hemorrhage.

6. Since Rajagopal Reddy (L.W. 2) was injured and critical, his dying declaration was recorded on 26.11.1996 by the IInd Additional District Munsif, Tirupati.

7. At the trial the prosecution examined 17 witnesses. The defence examined D. Ws 3 to 6 to prove their plea of alibi. P.W. 1 (Vakati Ramanaiah), P.W. 2 (Rayapati Venkata Ramanaiah) and P.W. 11 (SK Ahmed Basha) turned hostile. The prosecution did not examine Rajagopal Reddy (L.W. 2), Mohan (L.W. 11) and Karunakara Reddy (L.W. 3). Charge-sheet was filed against 20 accused under Sections 147, 148 and 302 of the Indian Penal Code (Indian Penal Code) against all the accused, under Sections 307 and 326 against A2, A3 and A12, u/s 307 read with Section 149 Indian Penal Code and u/s 326 read with Section 149 Indian Penal Code against A-1, A-4 to A-11 and A-13 to A-20. Upon considering the evidence and after hearing, the IIIrd-Additional District & Sessions Judge (Fast Track), Nellore found none of the accused guilty for the offences they were charged with and acquitted them.

8. The plea of alibi has been rejected by the Trial Court as well as the High Court.

Rejection of this plea is based on complete improbability of the plea and is not necessary to consider it any further, particularly, since it was not pressed seriously before us. In Appeal and Revision, the High Court considered the entire evidence on record and found that:

(a) Accused Nos. 1 to 12 are found guilty u/s 235(2) of the Code of Criminal Procedure (Code of Criminal Procedure) for the offences under Sections 147, 148 and 302 read with Section 149 of Indian Penal Code for causing the death of the deceased Mudi Parandhami Reddy and further u/s 324 read with Section 34 of Indian Penal Code for causing simple injuries to P.W. 3. They were awarded rigorous imprisonment for a period of one year each for the offences under Sections 147 and 148 of Indian Penal Code;

(b) Accused 1 to 12 were further sentenced to 'imprisonment for life' for the offence u/s 302 read with Section 149 of Indian Penal Code and a fine of Rs. 1,000/- (Rupees one thousand only) each, in default to suffer simple imprisonment for one month each;

(c) Accused 2 and 3 were further sentenced to undergo rigorous imprisonment for 6 months each for the offence u/s 324 read with Section 34 of Indian Penal Code;

(d) All the sentences were directed to run concurrently;

(e) Accused 13 to 20 were found not guilty for the offences with which they were charged and the High Court confirmed the judgment of the trial Court acquitting those accused. Both the criminal appeal and the criminal revision were allowed in part and the judgment of the trial court was set aside.

9. Shri Altaf Ahmed and Shri Mahabir Singh, learned senior counsel, appearing for the accused Nos. 1, 2 and 3 respectively, relied on the decisions of this Court in Rohtash Vs. State of Haryana, and Murugesan and Others Vs. State through Inspector of Police, for the principles reiterated by this Court for interfering with an order of acquittal. In Rohtash (supra) to which one of us (Dr. B.S. Chauhan, J.) was a party, this Court held that an order of acquittal is liable to be interfered with only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. In Rohtas (supra) this Court observed:

27. The High Court interfered with the order of acquittal recorded by the trial court. The law of interfering with the judgment of acquittal is well settled. It is to the effect that only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view if possible should be avoided, unless there

are good reasons for interference. [Vide State of Rajasthan Vs. Talevar and Another, and Govindaraju @ Govinda Vs. State by Srirampuram P.S. and Another,

10. In Murugesan (supra), this Court has observed as under:

21. A concise statement of the law on the issue that had emerged after over half a century of evolution since Sheo Swarup is to be found in para 42 of the report in Chandrappa and Others Vs. State of Karnataka, The same may, therefore, be usefully noticed below: (SCC 432)

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

(Emphasis supplied)

11. According to the learned Counsel the trial court has rightly disbelieved the prosecution case, particularly, in view of the evidence of Pelluru Murali Reddy (P.W. 3) and the non-examination of Rajagopal Reddy (L.W. 2). Other witnesses from the initial list have also been examined. As found by the trial court, the learned Counsel submitted that the depositions of several witnesses of the prosecution is without any credibility and even the presence of some of them on

the scene of the crime is doubtful or, they are interested witnesses. A conviction based on such evidence is not tenable. It was also submitted by the learned Counsel that the evidence of PW-3, who claims to be present, is itself doubtful. Pelluru Murali Reddy (P.W. 3) is the younger brother of Rajagopal Reddy (L.W. 2), whose son is K. Reddy. A-19, Pelluru Venu Reddy, is the elder brother of PW 3. A-20, Pelluru Sreedhar Reddy is son of A-19, Pelluru Venu Reddy. Admittedly, there is a dispute pertaining to land between Pelluru Murali Reddy (P.W. 3) and Rajagopal Reddy (L.W. 2) on one hand and A-19, Pelluru Venu Reddy and A-20, Pelluru Sreedhar Reddy, on the other. Therefore, the animus of this witness against the accused is clear. Moreover, the evidence of Pelluru Murali Reddy (P.W. 3) is itself unreliable because the witness deposed that the A-1 -Puchalapalli Parandhami Reddy, hacked the deceased with a battle axe whereas the injury on the head shows that it must have been caused by blunt side of an axe. The injury in question i.e. injury No. 1, is as follows:

(1) A bone deep lacerated injury of about 3" x 1/2" extending from middle of skull to the left parietal bone. Blood stains present with congestion. Deeper to it sub scalp congested and dark. L shaped fracture of skull in mid line for about 3 1/2" and to the right side of parietal bone. Brain coverings congested and dark. Subdural hematoma present over the middle of brain. Brain matter congested and dark. There is basal fracture of skull transversely from one petrous part of the bone to the other and fracture of right parietal bone, blood clots and congestion present over the base of skull and at the fractured areas. Injury is ante mortem.

12. The doctor has opined that this injury could have been caused by a blunt object. According to the learned Counsel the witness did not say that the accused reversed the axe while hitting the deceased on the head as the injury shows, and therefore he is lying or was not present. In the first place, we find that other witnesses have given the same deposition. It is possible that the statement of the witness is slightly inaccurate or the witness did not see properly which side of the axe was used. It is equally possible that the sharp edge of the axe is actually very blunt or it was reversed just before hitting the head. It is not possible to say what is the reason. That is however no reason for discarding the statement of the witness that A-1 - Puchalapalli Parandhami Reddy hit the deceased without a battle axe, as is obvious from the injury. Moreover, it is not possible to doubt the presence of this witness, who has himself been injured. Dr. M.C. Narasimhulu, P.W. 13, Medical Officer, has stated in his evidence that on 25-11-1996 at about 3.30 p.m., he examined this witness - P.W. 3 - P. Murali Reddy and found the following injuries:

(1) Diffused swelling with tenderness over middle 1/3rd and back of left forearm.

(2) A lacerated injury skin deep of about 1/2" over the back of head. Bleeding present with tenderness and swelling around.

13. We are also not impressed by the finding of the trial court that there is

discrepancy between the statement of Pelluru Murali Reddy (P.W. 3) and his oral testimony because he said in the statement that he saw the tractor in which the accused had arrived just before the house of A-19, Pelluru Venu Reddy and deposed that the house could not be seen from where he was standing. Such a discrepancy does not detract from the basic credibility of this witness, who along with his brother has been injured in the attack.

14. Besides, the evidence of Pelluru Murali Reddy (P.W. 3), there is a similar deposition by P.W. 4 (Bandila Mutyhyalaiah) and P.W. 5 (Rayapati Kotaiah) who were engaged by Pelluru Murali Reddy (P.W. 3) and his brother and P.W. 6 (Veluru Gopal Reddy) and P.W. 7 (Manneti Chenchiah), who had accompanied the deceased.

15. The evidence of P.W. 4 (Bandila Mutyhyalaiah) and P.W. 5 (Rayapati Kotaiah) was attacked on the ground that they were engaged by Pelluru Murali Reddy (P.W. 3) and P.W. 5 (Rayapati Kotaiah) and therefore are interested witnesses and not reliable. Such a contention cannot be accepted. There was no reason for these witnesses to falsely depose. It is equally true that there is no mention of these witnesses i.e. PWs. 4 and 5 in the F.I.R. We do not find anything significant in their non-mention since they were apparently from a different village and it is possible that their names were left out.

16. Their depositions are clear and consistent about the incident and are on the following line. That at about 7.30 or 8 a.m., P. Ws. 1, 2, 4 and 5 were ploughing the land with nagallu. The deceased was sitting on the northern side of the ridge. P.W. 6 (Veluru Gopal Reddy), Chenchiah L.W. 10 and Mohan L.W. 11 were standing on the eastern side. Meanwhile, accused 19 and 20 came there and objected for ploughing the land. The deceased intervened and informed that the disputes will be settled later and asked them to plough the land. On that, A- 19 and 20 left the fields. On the same day at about 10 a.m., A-1 came to the scene and hacked the deceased with a battle-axe on the head. After that, A-2 came and when P.W. 3 intervened, accused No. 2 beat P.W. 3 with the butt end of a chilakathi on the head. Then accused No. 3 came and hacked the deceased with an axe on the head. When P.W. 3 intervened, accused No. 3 beat with the same axe on the left hand of P.W. 3. Thereafter, accused No. 4 came and stabbed the deceased on the left shoulder. A-5 stabbed the deceased on the chest. A-6 stabbed the deceased with a spear on the left side back portion. A-7 stabbed the deceased on the back side. A-8 stabbed the deceased on the left ear and also on the abdomen. A-9 stabbed the deceased on the left side chest portion. A-10 beat the deceased with a stick on the left temple. A-11 stabbed the deceased with a chilakathi on the left side of the chest and on the left tempo. A-12 beat the deceased with an axe on the head. When Rajagopal Reddy L.W. 2 intervened, A-12 hacked him with the same battle-axe on the head. Due to that blow, he had fallen on the ground. After 15 minutes, Subrahmanyam Reddy, resident of Thimmareddyvagu, brought a tractor to the scene. P.W. 6, P.W. 3 and Subrahmanyam Reddy took the injured Rajagopal Reddy L.W. 2 in the said

tractor to Vakadu for treatment as his condition was serious. As there was no doctor available at Vakadu, Subrahmanyam Reddy brought a car and himself, Rajagopala Reddy L.W. 2, P.W. 3 and Subrahmanyam Reddy together took him to the Government Hospital, Gudur. There they were advised to take the injured L.W. 2 to Tirupati for expert treatment and thereafter he returned back to the house.

17. Deposition of P.W. 6, who accompanied the deceased fully corroborates the version of Pelluru Murali Reddy (P.W. 3). He stated that PW 3 and LW 2 came to the house of the deceased and requested him to mediate the dispute among the brothers. The deceased promised to come on the next day. On the next day what transpired is narrated by him as above. There is no substance in the contention that this witness supported the prosecution side in some earlier litigation, therefore, his testimony is liable to be discarded. P.W. 7 (Manneti Chenchiah) was also present when the deceased was requested to mediate the dispute on the earlier date and accompany him to the field on the next day. His narration of the incident is similar to the deposition of other witnesses and have been believed by the High Court. The prosecution case is fully supported by rest of the witnesses and the evidence.

18. The prosecution in this case has sufficiently established the motive, which is the political rivalry and the land dispute between the parties; their preparation, which consists the accused party going to the field of Pelluru Murali Reddy (P.W. 3) and Rajagopal Reddy (L.W. 2) with arms; the recovery of these arms at the instance of A-2, Konduru Nagure Reddy; the discovery of blood stains on the knife and battle-axe and ante mortem injuries inflicted on the deceased, as per the inquest and post mortem report. The injuries were caused to the deceased by the accused, which are as under:

P.W. 3 - Pelluru Murali Reddy stated about the injuries on the deceased as under:

A-1 - hacked the deceased on the head with battle axe.

A-3 - with axe - beat the deceased on the head.

A-4 - with bitchuva (knife) stabbed the deceased on the left side chest and underneath of left arm pit.

A-5 - With Bitchuva (Knife) - stabbed the deceased Parandhami Reddy on the left side of the chest and underneath, left arm pit resulting bleeding injuries.

A-6 - Spear - stabbed the deceased on the left side back portion, resulting bleeding injuries.

A-7 - Spear - on left side back portion of the deceased resulting bleeding injuries.

A-8 - Chilakathi - stabbed the deceased on the left ear and on his abdomen.

A-9 - Spear - stabbed the deceased on the left side chest portion and also on umbilicus.

A-10 - Stick - beat the deceased on the left temporal region.

A-11 - Chilakathi - stabbed on the left side temple region near the left ear and also on the abdomen causing bleeding injury.

A-12 - with battle axe - backed the deceased on the head caused bleeding injury.

Other accused beat the deceased indiscriminately with sticks and iron rods.

P.W. 4 - Bandila Mutyhalaiah - spoke about the injuries on the deceased as under:

A-1 - hacked the deceased - with battle axe on the head.

A-3 - with axe - beat deceased Parandhami Reddy on the head.

A-4 - stabbed - deceased with Bitchuva on the left side of the chest and also underneath left arm pit.

A-5 - stabbed the deceased with Bitchuva on the left side of the chest and also underneath the left arm pit.

A-6 -With Spear - stabbed the deceased on the left side back portion.

A-7 - With Spear stabbed the deceased on the left side back portion.

A-8 - With Chilakathi - hacked the deceased on the left ear and abdomen of the deceased.

A-9 - With Spear - stabbed the deceased on the left side of the chest and also on the umbilicus.

A-10 - With Stick - beat the deceased on the left side temporal region.

A-11 - hacked the deceased with Chilakathi on the left side temple and also on the left side of chest.

A-12 - hacked the deceased with battle axe on the head.

Other accused beat the deceased indiscriminately with iron rods and sticks.

P.W. 5 (Rayapati Kotaiah) - spoke about the injuries on the deceased as under:

A-1 - With axe beat Parandhami Reddy on the head.

A-3 - hacked the deceased with axe on the head.

A-4 - stabbed - deceased with Bitchuva on the left side of the chest and also underneath left arm pit.

A-5 - stabbed the deceased with Bitchuva on the left side of the chest and also underneath the left arm pit.

A-6 -With Spear - stabbed the deceased on the left side back portion.

A-7 - Armed with Spear - stabbed on the left side back portion.

A-8 - stabbed the deceased - with Chilakathi -on the left ear and abdomen.

A-9 - With Spear - stabbed the deceased on the left side of the chest.

A-10 - beat the deceased with spear - with stick temporal region.

A-11 - stabbed the deceased with Chilakathi on the left side of the chest and on the left side of the temple region.

A-12 - hacked the deceased with battle axe on the head.

Other accused beat the deceased indiscriminately.

P.W. 6 - Veluru Gopal Reddy stated about the injuries on the deceased as under:

A-1 - hacked the deceased with battle axe on the head.

A-4 - stabbed - Parandhami Reddy on the left shoulder.

A-5 - stabbed the deceased on the chest.

A-6 - stabbed the deceased with Spear on the left side back portion.

A-7 - stabbed Parandhami Reddy on the left side.

A-8 - stabbed Parandhami Reddy on the left ear and also on the abdomen.

A-9 - stabbed Parandhami Reddy on the left side chest portion.

A-10 - beat the deceased with stick on the left temporal region of deceased Parandhami Reddy.

A-11 - stabbed the deceased with Chilakathi on the left side of the chest and left side of the temple region.

A-12 - beat Parandhami Reddy with axe on his head.

P.W. 7 (Manneti Chenchiah) stated about the injuries on the deceased as under:

A-1 -axed the deceased on the head with battle axe.

A-3 - hacked Parandhami Reddy with axe on the head.

A-4 - stabbed - Parandhami Reddy with bitchuva on the left side of the chest and underneath the left arm pit.

A-5 - stabbed Parandhami Reddy with bitchuva on the left side of the chest and underneath the left arm pit.

A-6 - stabbed the deceased with Spear on the left side back portion.

A-7 - stabbed the deceased with spear on the left side back portion.

A-8 - stabbed the deceased with Chilakathi on the left ear and also on the abdomen.

A-9 - stabbed the deceased with spear on the left side of the chest and also on

umbilicus.

A-10 - beat Parandhami Reddy with sticks on the left temporal region.

A-11 - stabbed Parandhami Reddy with Chilakathi on the left side of the chest and left side of the temple region.

A-12 - beat the deceased on the chest with battle axe.

19. We have found that the injuries on the deceased are completely relatable to the injuries to the attack as deposed to by the prosecution witnesses.

20. We have carefully examined the alleged discrepancies and we do not find that the discrepancies and doubts are such as makes their testimonies liable to be rejected, in view of the deposition of PWs 3, 6 and 7, which is clear and consistent.

21. In State of U.P. Vs. Anil Singh, , this Court observed as follows:

In an appeal against acquittal, in the great majority of cases, the prosecution version is rejected either for want of corroboration by independent witnesses, or for some falsehood, stated or embroidery added by witnesses. In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. The indifferent attitude of the public in the investigation of crimes could also be pointed. The public are generally reluctant to come forward to depose before the Court. It is, therefore, not correct to reject the prosecution version only on ground that all witnesses to occurrence have not been examined. It is also not proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable. With regard to falsehood stated or embellishments added by the prosecution witnesses, it is well to remember that there is a tendency amongst witnesses in our country to back up a good case by false or exaggerated version. It is also experienced that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies of falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform.

22. In State of Punjab Vs. Karnail Singh, this Court held as follows:

There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of

administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not.

23. Having regard to the above law laid down by this Court, the High Court was fully justified in reversing the order of acquittal in respect of accused Nos. 1 to 12.

24. At this stage, we might note that we are not impressed by the submission advanced on behalf of the Appellants that the prosecution case fails because Rajagopal Reddy (L.W. 2), who is said to be injured in the attack, was not examined. LW 2, the brother of PW 3, is said to have received one simple injury on the head in the attack. The witnesses stated that he received several injuries on his head, however, the evidence of the Medical Officer shows that the X-ray of the skull was taken on 25.11.1996 and there was one simple injury on his head on the date of the offence. This witness obviously should have been examined but for reasons best known to the prosecution was not examined. Though his dying declaration was recorded by the IInd Additional Munsif, Tirupati on 26.11.1996, this witness survived.

25. In Sunil Kumar and others Vs. State of Madhya Pradesh, this Court held as under:

...that immediately after PW 1, injured witness was taken to the hospital his statement was recorded as a dying declaration which, consequent upon his survival, is to be treated only as a statement recorded u/s 164, Code of Criminal Procedure and can be used for corroboration or contradiction. This statement recorded by the Magistrate at the earliest available opportunity clearly discloses the substratum of the prosecution case including the names of the Appellants as assailants and there is not an iota of materials on record to show that this was the upshot of his tutoring. On the contrary, this statement was made at a point of time when PW 1 was in a critical condition and it is difficult to believe that he would falsely implicate the Appellants leaving aside the real culprits....that there was only some minor inconsequential contradictions which did not at all impair his evidence. Then again, as already noticed, the evidences of the doctors fully supports his version of the incident.

(Emphasis added)

26. In Maqsoodan and Others Vs. State of Uttar Pradesh, this Court dealt with an issue wherein a person, who had made a statement in expectation of death, did

not die. This Court held that it cannot be treated as a dying declaration as his statement was not admissible u/s 32 of the Indian Evidence Act, 1872, but it was to be dealt with u/s 157 of the Evidence Act, which provides that the former statement of a witness may be proved to corroborate later testimony as to the same fact.

27. In Ramprasad Vs. State of Maharashtra, a similar view has been re-iterated by this Court as this Court observed:

Be that as it may, the question is whether the court could treat it as an item of evidence for any purpose. Section 157 of the Evidence Act permits proof of any former statement made by a witness relating to the same fact before "any authority legally competent to investigate the fact" but its use is limited to corroboration of the testimony of such witness. Though a police officer is legally competent to investigate, any statement made to him during such investigation cannot be used to corroborate the testimony of a witness because of the clear interdict contained in Section 162 of the Code. But a statement made to a magistrate is not affected by the prohibition contained in the said Section. A magistrate can record the statement of a person as provided in Section 164 of the Code and such statement would either be elevated to the status of Section 32 if the maker of the statement subsequently dies or it would remain within the realm of what it was originally. A statement recorded by a magistrate u/s 164 becomes usable to corroborate the witness as provided in Section 157 of the Evidence Act or to contradict him as provided in Section 155 thereof.

28. The above view has also been reiterated by this Court in Gentela Vijayavardhan Rao and another Vs. State of Andhra Pradesh, ; State of U.P. Vs. Veer Singh and Others, ; and Ranjit Singh and Others Vs. State of Madhya Pradesh,

29. In this case, however, we are not inclined to go into the issue since Rajagopal Reddy (L.W. 2), was not examined at all. No issue has been raised whether a witness could have corroborated or contradicted on the basis of the statement recorded by the IInd Additional Munsif, Tirupati.

30. Shri A.K. Sanghi, learned senior counsel appearing for A-2 -Konduru Nagure Reddy, submitted that this accused has been charged for the offences under Sections 147, 148 and 302 read with Section 149 of the Indian Penal Code etc. He pointed out that the only overt act attributed to him by some of the prosecution witnesses is that because Pelluru Murali Reddy (P.W. 3) intervened during the attack, he beat the said PW 3 with the blunt axe of Chillakathi on his back side. This according to the learned Counsel only resulted in a simple lacerated injury skin deep of about 1 1/2" over the back head of Pelluru Murali Reddy (P.W. 3). The Medical Officer has opined that this injury is simple. In the circumstances, the conviction and sentence of A-2, Konduru Nagure Reddy, awarded by the trial court and affirmed by the High Court is liable to be modified. We hold A-2, Konduru Nagure Reddy, guilty only for the offence punishable u/s

324 read with Section 34 of the Indian Penal Code. We, therefore, alter the conviction of A-2, Konduru Nagure Reddy, from Sections 147, 148 and 302 read with Section 149 of the Indian Penal Code etc. to Section 324 read with Section 34 of the Indian Penal Code. In our considered opinion, custody and sentence of 2 (two) years would be appropriate and sufficient. The accused-Appellant shall undergo imprisonment for a term of 2 years, if not already undergone, in terms of this order.

31. In view of the above, we allow Criminal Appeal Nos. 1093-1094 of 2011, filed by A-2, Konduru Nagure Reddy, to the extent indicated above. Rest of the appeals are dismissed.