

(2015) 09 KAR CK 0307

In the Karnataka High Court

Case No : Criminal Appeal Nos. 710, 732, 146, 233/2012, 1310/2011 and 210 of 2013

Shanmukha and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 21-09-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 302

Citation : (2015) 09 KAR CK 0307

Hon'ble Judges : Mohan M. Shantana Goudar, J;Budiha R.B., J

Bench : Division Bench

Advocate : H.S. Suresh, Advocate for Kavitha Mahesh, for the Appellant; P.M. Nawaz, SPP-I, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mohan M. Shantana Goudar, J—The judgment and order of conviction dated 24.10.2011 passed by the Additional Sessions Court, Chikmagalur in S.C. No. 236/2006 is called in question in these appeals.

By the impugned judgment, the trial Court has acquitted accused No. 5 (Smt. Renuka) and convicted accused Nos. 1 to 4 for the offences punishable under Sections 143, 147, 148, 302, 307 read with Section 34 of IPC and sentenced them.

2. Crl. A. No. 710/2012 is filed by convicted accused No. 1; Crl. A. No. 732/2012 is filed by convicted accused No. 2; Crl. A. No. 1310/2011 is filed by convicted accused No. 3; Crl. A. No. 146/2012 is filed by convicted accused No. 4. All these appeals are filed against judgment and order of conviction. The convicted accused have sought for their acquittal.

Crl. A. No. 233/2012 is filed by the State against the judgment and order of acquittal passed in favour of accused No. 5. Crl. A. No. 210/2013 is filed by the wife of the deceased (victim in this appeal) against acquittal of accused No. 5.

Since all these appeals arise out of the same judgment mentioned supra, they are heard and decided together by this judgment.

3. Case of prosecution in brief is that the agricultural land of accused is near the agricultural land of the deceased; the family members of the deceased have drawn pipeline through the land of accused Nos. 1, 3 and 4 in order to irrigate their land with the consent of the said accused. The pipeline was drawn at about three feet beneath the land; there existed dispute with regard to the pipeline; three months prior to the incident in question, the quarrel ensued between accused Nos. 1, 3 and 4 on the one side and the deceased and his family members on the other; the complaints and counter complaints were filed before the police station at Belur; since then, animosity continued at greater pace; accused Nos. 1, 3 and 4 were grinding axe against family members of the deceased; the day prior to the incident i.e., on 01.07.2006, quarrel took place once again between the women folk of the two families; the male members of the family intervened and ultimately, it ended in causing small invisible injuries on both sides. In that regard, P.W. 20 (Mr. Niranjana S/o. Rudragowda) lodged a complaint before Belur Police Station as per Ex. P.32 on 01.07.2006, which came to be registered as NCR 152/2006 (non-cognizable case); P.Ws. 16, 17 and 18 (Doctors) treated certain accused including accused No. 5; accused No. 5 was subjected to scanning examination. When the facts stood thus, the deceased received a telephone call over his mobile phone from accused No. 4 in the evening of 01.07.2006; accused No. 4 suggested the deceased that matter can be compromised amicably in the joint meeting between family members of the accused and the family members of the deceased. The deceased readily agreed for getting the matter compromised; at about 2.00 p.m. on 02.07.2006 accused No. 4 once again told the deceased that himself and accused No. 3 have come from Bengaluru for compromise talks and they are in Chikmagalur town. So saying accused No. 4 suggested the deceased to go over to Chikmagalur from his village for compromise talks and accordingly, the deceased along with his younger brother Theertha Kumar (P.W. 1) and Mr. Niranjana M.S. (P.W. 3) S/o. Soma Shekarappa went in his Maruthi Car from the village towards Chikmagalur; when they were so proceeding towards Chikmagalur, an auto rickshaw came from the opposite direction wherein accused No. 4 was traveling; accused No. 4 requested the deceased to stop the car by making hand signal and accordingly, the deceased stopped his car and talked to accused No. 4; the auto rickshaw in which accused No. 4 was travelling was being driven by P.W. 4 Chandru; accused Nos. 2 and 3 were also sitting in the said auto rickshaw with accused No. 4; thereafter accused Nos. 3 and 4 boarded the car of the deceased and sat along with the deceased and P.Ws. 1 and 3, and asked accused No. 2 to follow the car and started going towards village for talks; however, on the way accused No. 4 received telephone call over his mobile phone and that accordingly, he requested the deceased to stop the car for a while and got down from the car and talked over mobile phone for certain time; after finishing his talks over mobile phone, accused No. 4 told that he wants to proceed to Chikmagalur since his sister-in-

law (Accused No. 5) is undergoing scanning test at Chikmagalur and that compromise talks can be held after visiting the hospital; in the meanwhile, P.W. 3 received a telephone call on his mobile phone and after finishing his talks over mobile told the deceased and P.W. 1 that he has got some work in the village and that he will not accompany the deceased and P.W. 1 any further for compromise talks and he will join them after some period. So saying, P.W. 3 got down from the car and went to his work. By that time, the auto rickshaw in which accused No. 2 was sitting reached the spot from behind; accused No. 2 got down from the auto and sat in the car of the deceased. P.W. 4 went back after receiving hire charges relating to Auto-rickshaw. Thereafter, P.W. 1, deceased and accused Nos. 2 to 4 proceeded towards Chikmagalur; in the meanwhile, a goods auto rickshaw came from opposite direction which was driven by accused No. 1. On seeing the goods auto rickshaw driven by accused No. 1, accused No. 4 told the deceased to stop the car for some time. Accordingly, the deceased stopped the car. Immediately, thereafter, accused No. 2 got down from the car and proceeded towards goods auto rickshaw driven by accused No. 1; he brought choppers from the said auto rickshaw of accused No. 1 and gave it to accused Nos. 3 and 4 and accused No. 2 also took one more chopper from the goods auto rickshaw of accused No. 1; accused No. 1 also got down from his auto rickshaw; all the accused Nos. 1 to 4 started to assault P.W. 1 and the deceased; the deceased, however, tried to escape from the scene. In the mean while, P.W. 1 was assaulted with choppers by the accused indiscriminately and ultimately, the deceased was also caught and assaulted by all the four accused indiscriminately. Consequent upon which, the deceased as well as P.W. 1 fell down on the ground with bleeding injuries.

P.W. 2, who was coming on the said way after purchasing a pair of bullocks, saw the incident standing about 50 feet away from the scene of offence; P.W. 8 (brother of deceased) and C.W. 6 (another brother of deceased) also came to the spot immediately after the incident and shifted both injured to Chikmagalur hospital at the first instance; the doctor (P.W. 32) at Chikmagalur hospital admitted P.W. 1 and gave him the first aid treatment. Since the health condition of P.W. 1 was serious and as the doctor felt that P.W. 1 may lose his life in case if higher treatment is not given to him, he advised P.W. 8 and others, who had come along with injured at the time of admission, to shift P.W. 1 to Manipal Hospital, Udupi District. Accordingly, he was shifted to Manipal Hospital, Udupi District. In the meanwhile, the statement of P.W. 1 was recorded as per Ex. P.1 in M.G Hospital, Chikmagalur from 3.15 to 4.00 p.m., based on which crime No. 404/2006 came to be registered for the offences punishable under Sections 143, 148, 324, 307, 302 read with 149 of IPC. The deceased who was brought along with P.W. 1 for treatment to M.G. Hospital, Chikmagalur was declared as "brought dead", which means the deceased had lost his life on the spot. P.W. 1 took the treatment for about two months in Manipal Hospital, Udupi district.

4. Sub-Inspector of police who recorded statement of P.W. 1 in M.G. Hospital, Chikmagalur as per Ex. P.1 has registered the crime. At the time of recording

statement (Ex. P.1), the jurisdictional Taluka Executive Magistrate (P.W. 19) and the Doctor (P.W. 32) were present. After completion of investigation, Inspector of Police (P.W. 28) laid the charge sheet.

5. In order to prove its case, the prosecution in all examined 33 witnesses and got marked 54 exhibits and 21 material objects.

On behalf of defence, three witnesses were examined and 5 exhibits were got marked.

6. As aforementioned, on evaluation of the entire material on record, the Trial Court acquitted accused No. 5 of all the charges leveled against her and convicted accused Nos. 1 to 4 for the offences punishable under Sections 143, 147, 148, 302, 307 read with Section 34 of IPC.

7. Before proceeding further, it would be beneficial to note the version of each of the witnesses made before the Court in brief.

8. P.W. 1, is the injured eye-witness. He is the brother of the deceased. He lodged the complaint as per Ex. P.1. He sustained 15 injuries as per the version of Doctor (P.W. 33), Manipal Hospital, Udupi district. The injury certificate issued by the said doctor is at Ex. P.44. Earlier to it, P.W. 1 was treated by the doctor (P.W. 32) in M.G. Hospital, Chikmagalur. The wound certificate issued by P.W. 32 is at Ex. 42.

P.W. 2 is the eye-witness to the incident in question. He is known to the accused as well as deceased.

P.W. 3 has deposed that he accompanied deceased and P.W. 1 for compromise talks in the car of the deceased; however, subsequently he left the company of the deceased and P.W. 1 inasmuch as by that time accused Nos. 2 to 4 who had met the deceased told that compromise talks may take place after some time.

P.W. 4 is driver of the auto-rickshaw in which accused Nos. 2 to 4 had travelled from Chikmagalur to the spot wherein the accused met deceased and P.W. 1 who were coming in Maruthi Car from the opposite direction.

P.W. 5 is the witness for seizure Panchanama (Ex. P.3) under which the car (M.O. 14) was recovered. He is also the witness for panchanama Ex. P.4 under which the blood stained shoves (M.Os. 18 and 19) of accused Nos. 3 and 4 were seized from the possession of accused Nos. 3 and 4.

P.W. 6 is the witness for inquest panchanama (Ex. P.5).

P.W. 7 is the brother-in-law of the deceased. He is the witness for Ex. P.6 under which the blood stained clothes of P.W. 1 was seized.

P.W. 8 is the younger brother of the deceased. He visited the spot after the incident along with C.W.6 (Dharma Gowda). He came to know about the incident in question from P.W. 1. He is the witness for the scene of offence Panchanama Ex. P.7.

P.W. 9 is the witness for panchanama Ex. P.7 under which M.Os. 5, 17, 20 and 21 were recovered.

P.W. 10 is the witness for recovery panchanama (Ex. P.10) under which M.Os. 2 and 3 (choppers) were seized at the instance of accused Nos. 3 and 4 respectively.

P.W. 11 is the witness for recovery panchanama (Ex. P.6) under which the blood stained clothes of P.W. 1 were recovered.

P.W. 12 is the witness for recovery panchanama (Ex. P.11) under which M.O. 4-chopper was recovered at the instance of accused No. 2.

P.W. 13 was the worker in a juice shop owned by accused No. 3. He was sleeping in the house of accused No. 3. He has deposed about hearing of news of murder of the deceased through telephone of his father. According to P.W. 13, accused Nos. 3 and 4 were in Chikmagalur on the previous day of the incident in question.

P.W. 14 is the witness for Exs. P.12 and P.13 under which the goods auto rickshaw and the tempo (M.Os. 15 and 16) were seized.

P.W. 15 is the witness for Ex. P.14 under which M.O. 1 was recovered at the instance of accused No. 1.

P.W. 16 is the doctor at Belur. He treated accused Nos. 1 and 5 since they had sustained certain injuries in the incident that took place on 1.7.2006. All those injuries were invisible. He has issued wound certificates (Exs. P.15 to 17) in respect of the aforementioned offences.

P.W. 17 is the junior doctor of P.W. 16. She directed accused No. 5 to get scanning done. She has produced Ex. P.15 issued by her in getting the scanning examination.

P.W. 18 is another doctor. He conducted scanning of abdomen of accused No. 5. His report is at Ex. P.20.

P.W. 19 is Taluka Executive Magistrate. He was present while recording the statement of P.W. 1 (injured) by Police Sub Inspector as per Ex. P.1.

P.W. 20 speaks about the motive for commission of the offence i.e., prior disputes between the parties with regard to drawing up of pipe line etc.

P.W. 21 is the son of the deceased. He has deposed that accused No. 4 had called his father (deceased) on 01.07.2006 over his mobile phone.

P.W. 22 is a doctor, he conducted autopsy over the dead body of the deceased. Autopsy report is at Ex. P.21. He has opined that the death is due to hemorrhage and shock. He has also given opinion as per Ex. P.23(a).

P.W. 23 is the photographer who took the photographs of the deceased on the scene of offence as per Exs. P.30 and P.54.

P.W. 24 is Assistant Sub-Inspector of Police. He apprehended accused Nos. 3 and 4.

P.W. 25 is the constable participated during investigation.

P.W. 26 is the retired constable.

P.W. 27 is the Inspector who conducted partial Investigation since P.W. 28 was on leave.

P.W. 28 was the Investigation Officer. He completed investigation and laid the charge sheet.

P.W. 29 is another Police Constable who arrested accused No. 2 on 27.07.2006.

P.W. 30 is another police constable. He has produced goods auto (M.O. 15) before the Investigating Officer.

P.W. 31 is the PSI who recorded the statement of the injured from 03.15 p.m. to 04.00 p.m. as per Ex. P.1 and registered crime No. 404/2006.

P.W. 32 is the doctor. He initially treated P.W. 1 in M.G. Hospital, Chikmagalur and issued wound certificate as per Ex. P.42.

P.W. 33 is the doctor who gave treatment to P.W. 1 subsequently at Manipal Hospital, Udupi. Ex. P.44 is the wound certificate issued by P.W. 33.

On behalf of the defence, three witnesses are examined.

D.W. 1 is the doctor who has given treatment to accused No. 2 on 1.7.2006 in the Corporation Hospital, Rajaji Nagar, Bengaluru. D.W. 2 is the Manager of Car Automobile Shop. He has deposed about accused No. 2 purchasing certain spare parts of the vehicle from his shop on 3.7.2006. D.W. 3 is the owner of Malik Auto Diesel Works. He was supposed to depose about the repair of vehicle of accused No. 2 and about providing spare parts, but he has turned hostile.

9. As mentioned supra, the first information at Ex. P1 was lodged by injured eye witness-P.W. 1 who is none other than the brother of the deceased. Ex. P1 states that the land of accused Nos. 1, 3, 4 (genitive brothers inter se) is situated near the land of the complainant; the deceased is the brother of the complainant; accused 1, 3, 4 were having grudge against the deceased and his family members since there is dispute between the two families with regard to laying of pipeline; quarrels had taken place about three months prior to the incident in question and in that regard, P.W. 1 had lodged the complaint before Belur Police Station; since then the enmity between the two families aggravated; on 1.7.2006, there was a quarrel between the women folk of complainant's family and the women folk of the family of the accused; in that regard, P.W. 8 (brother of the complainant and the deceased) questioned accused No. 1; accused No. 1 in turn came to assault P.W. 8 with chopper; in that regard also complaint came to be lodged in Belur Police Station; at 2.00 p.m., on 2.7.2006 the deceased had informed the complainant that on previous night i.e., on 1.7.2006, accused No. 4

had called him over phone and informed him that they may get the matter compromised; accused No. 4 had told the deceased that he and his brothers would come to Chikkamagalur and told that the deceased, P.W. 1 as well as his family members may come to get the matter compromised; accordingly, P.W. 1 and the deceased went towards Chikkamagalur in their car; when they reached the tank bund of Magadi Tank, accused No. 4 came in an autorickshaw and asked P.W. 1 to stop the car; consequently, P.W. 1 and deceased stopped and got down from the car; the autorickshaw in which accused No. 4 had come was driven by Mr. Chandra (PW4) and in the very autorickshaw accused Nos. 2 and 3 were travelling. When they were talking with accused Nos. 3 and 4, goods" autorickshaw followed which was driven by accused No. 1; a tempo also came from behind autorickshaw in which accused No. 5 and other members of the family had come; accused No. 1 and 2 started assaulting the deceased with choppers; accused Nos. 3 and 4 started assaulting the complainant; accused No. 5 and one Shivamma also started assaulting him; the accused threatened P.W. 1 and the deceased with dire consequences; at that point of time, the brother of the complainant-P.W. 8 came along with younger brother Dharmegowda(C.W. 6) on a motor cycle and shifted both P.W. 1 and the deceased to Chikkamagalur Hospital, wherein the deceased was declared brought dead; P.W. 1 had sustained number of injuries including grievous injuries; Ex. P1 came to be lodged at 3.15 p.m. on 2.7.2006 in M.G. Hospital, wherein P.W. 1 was taking treatment.

10. The material on record further discloses that P.W. 1 who had sustained severe injuries was immediately shifted to Manipal Hospital, Udupi District for higher treatment; Ex. P42 is the wound certificate issued by M.G. Hospital and Ex. P44 is the wound certificate issued by Kasturba Hospital, Manipal. Both of them pertain to injured P.W. 1. Exs. P42 and 44 (wound certificates) discloses that P.W. 1 had sustained as many as nine injuries, including the fractures. An incise wound, measuring about 10 cm. was found and also left temporal scalp with bleeding. Other injuries were also suffered by P.W. 1 as is clear from the wound certificate. Ex. P44 issued by Kasturba Hospital, Manipal, Udupi District states that injured P.W. 1 had sustained 15 injuries including fractures. Ex. P42, the wound certificate issued by M.G. Hospital, Chikkamagalur states the history of the incident in question to the effect that injury caused by P.W. 1 was because of the assault by accused Nos. 1, 3, 4, 5 and others at 2.30 p.m. on 2.7.2006. He was admitted to hospital at 3.05 p.m. and medical examination was commenced immediately thereafter. Ex. P44 further makes it clear that injured P.W. 1 was admitted to hospital at about 11.30 p.m. on 2.7.2006 and medical examination was commenced immediately thereafter. The said certificate also discloses the history of assault on P.W. 1 on 2.7.2006 while he was traveling in a car. Thus, history as mentioned in Exx. P42 and P44 immediately after the incident supports the case of the prosecution as found in Ex. P1.

11. Ex. P21 is the postmortem report. The same makes it clear that the deceased had suffered six injuries all over the body and the cause of death is due to hemorrhage and shock. We have already mentioned supra that the death was

instantaneous inasmuch as by the time the deceased could be taken to M.G. Hospital, Chikkamagalur, i.e., immediately after the incident, the victim had expired. Looking to the postmortem report, it is amply clear that it is a case of homicidal death.

12. The important witnesses in this matter are PWs. 1 and 2. The prosecution relies upon the evidence of PWs. 3 and 4 also to support the case that the accused committed the crime. It is clear from the records that P.W. 1 had also sustained injuries in the very incident and was taken to the hospital by P.W. 8, immediately after the incident. P.W. 1 is the injured eye witness. Before the Court, he has deposed about the motive for commission of offence and about the incident. He has reiterated his version as found in Ex. P1-complaint. He has deposed that at about 4.00 p.m. on 1.7.2006, accused Nos. 1 and 5 had assaulted P.W. 8 and P.W. 20 (relative of the deceased) keeping in mind the motive relating to the dispute with regard to laying of pipeline and in that regard complaint was filed by P.W. 8 in Belur Police Station; at about 8.00 p.m. to 8.30 p.m. on 1.7.2006, accused Nos. 3 and 4 had called to the mobile phone of the deceased and informed him that they should not quarrel any further on the issue of laying of pipeline and other issues; and that they may get the matter compromised inter se. Accused Nos. 3 and 4 had told the deceased that they would go to Chikkamagalur on the next day, i.e., on 2.7.2006 and that the accused as well as the complainant's family can get the matter compromised at Chikkamagalur. During the night of 1.7.2006, P.W. 2 had also come to the house of the deceased since he wanted to purchase the pair of bullocks in the market of Hanike, which is about 5 kms. from the native place of the deceased; However, P.W. 2 left the house of the deceased at 7.30 a.m. on 2.7.2006 for purchasing the bullocks in Hanike market.

Believing the words of accused Nos. 3 and 4, the deceased and P.W. 1 went towards Chickmagalur in their car inasmuch as by 12.00 noon on 2.7.2006; the deceased received another telephone call at 12.00 noon from accused Nos. 3 and 4 that they came to Chickmagalur; they also took P.W. 3 - Niranjan (political leader) in order to mediate between two families and to get the matter compromised; P.W. 1 and the deceased together went in Maruthi 800 car bearing No. MH.01-4749; P.W. 1 was driving the car and whereas the deceased and P.W. 3 - Niranjan were sitting on the rear seat; while they were proceeding near Karthikere village, an auto-rickshaw came from opposite direction from Chickmagalur; the fourth accused, who was coming in the auto-rickshaw made hand signal to the car, which was being driven by P.W. 1 requesting him to stop the vehicle; accordingly, P.W. 1 stopped the car, so also the auto-rickshaw in which accused No. 4 was travelling also stopped. Accused Nos. 2 and 3 had also come along with accused No. 4 in the auto-rickshaw and the said auto-rickshaw was driven by P.W. 4; on the request of accused Nos. 3 and 4, the deceased and P.W. 1 turned back the car towards village without proceeding towards Chickmagalur inasmuch as accused Nos. 3 and 4 wanted to compromise the matter in the village itself; in the car of the deceased, accused Nos. 3 and 4 also

sat; thus accused Nos. 3, 4, PWs. 1, 3 and the deceased were coming back towards the village in Maruthi car of the deceased; second accused however who was travelling in the auto-rickshaw was directed by accused No. 4 to follow the car; when they reached Magadi hand-post, the fourth accused received a telephone call and accordingly, he requested P.W. 1 to stop the car; after getting down from the car, accused No. 4 talked with somebody over phone for two minutes and told the deceased and P.W. 1 that he had to go to Chickmagalur urgently inasmuch as the wife of accused No. 1 (accused No. 5) was undergoing scanning test at Chickmagalur; accused No. 4 thus requested the deceased and P.W. 1 to proceed to Chickmagalur once again, for seeing accused No. 5 at Chickmagalur, with an assurance that compromise talks may take place after returning back from Chickmagalur; P.W. 3 got down from car and discontinued his journey along with P.W. 1, deceased and others, in order to go back to attend his personal work; while so proceeding towards Chickmagalur, the auto-rickshaw of accused No. 2 which was following the car came to the spot and he also boarded in the car; the goods" auto-rickshaw came from the opposite direction, which was being driven by accused No. 1; on request, P.W. 1 stopped Maruthi car; immediately thereafter accused No. 2 rushed to the auto-rickshaw of accused No. 1 and took out the choppers carried out by accused No. 1, distributed among the accused and all of them started assaulting P.W. 1 and the deceased; however, it is vaguely deposed that accused No. 5 also instigated accused Nos. 1 to 4 to do away with the life of the deceased as well as P.W. 1. All the accused started assaulting P.W. 1 and the deceased mercilessly, consequent upon which both injured fell down on the ground with blood injuries. The incident has occurred at about 2.30 p.m.; at the time of incident, P.W. 1/injured eye witness had seen one person with a pair of bullocks standing at the distance of about 50 feet; the window glasses of the car were broken and damaged; thereafter all the accused fled away from the scene in the auto-rickshaw as well as in the car of the victim; within five minutes of the incident, P.W. 8 - Mallikarjuna and C.W. 6 Dharmegowda also came to the spot in the motor cycle and they shifted both injured to Chickmagalur District hospital.

Immediately after admission of P.W. 1 to the hospital, he was treated by the Doctor; the police came to the spot and recorded the statement of P.W. 1 as per Ex. P1; since P.W. 1 was not in a position to sign, his left thumb impression was taken on the complaint - Ex. P1; at about 5.30 p.m, on the medical advice tendered by the Chickmagalur District Hospital, he took treatment at Manipal Hospital for about one month. In the examination-in-chief itself, P.W. 1 has clearly clarified that the injuries sustained are because of the assault on him and on his deceased brother by accused Nos. 1 to 4. He was in an utter shock and therefore certain minor mistakes crept in the complaint - Ex. P1; such minor mistakes were clarified by P.W. 1 in his further statement recorded by the Police subsequently during the course of investigation; He identified the weapons - M.Os. 1 to 4 used by the accused for commission of offence; He has also identified the blood stained clothes of himself and of the deceased.

13. In the cross-examination, P.W. 1 admits that he had not taken consent of authorities for laying of the pipelines in the land of the accused; the buses would ply on the road over which the incident has taken place; that the complaint and counter complaint were lodged against each other; accused Nos. 3 and 4 had called the deceased and P.W. 1 for talks; while proceeding with accused Nos. 3 and 4 in their Maruthi car at request, no quarrel took place between them; accused Nos. 2, 3 and 4 did not carry any weapons, when they reached the spot and talked with the deceased and P.W. 1. He has further clarified in his cross-examination that he was not unconscious immediately after the incident and that he was conscious till he took first-aid in Manipal Hospital. However, he became unconscious only when he was taken to operation theatre at Manipal Hospital. P.W. 8 and C.W. 6 came to the spot after five minutes of the incident and that he has given the history of the incident before the Doctors; he informed about the incident to P.W. 8 and other relatives who had accompanied him to Manipal Hospital. He has further clarified that at the time of incident, it was not raining; one person was standing about 50 feet away alongwith bullocks. Subsequently, he came to know that such person was P.W. 2 - Lokesh; He has reiterated in the cross-examination about the motive for the commission of offence and that he was conscious enough while lodging the complaint. He has specified the role of each of the accused at the time of incident. Though P.W. 1 was subjected to cross-examination by the accused, nothing worth is elicited, so as to discard his evidence. However, accused No. 2 has tried to make-out a plea of alibi by suggesting P.W. 1 in his cross-examination that he was taking treatment at Rajajinagar Government Hospital on 1.7.2006 and 2.7.2006; he had purchased automobiles spare parts in Car Automobiles at Bengaluru on 3.7.2006; he had got his vehicle repaired in Auto Diesel Works garage situated at Belur Nehru Nagar on 4.7.2006; however all such suggestions are denied by P.W. 1.

14. The sum and substance of the evidence of P.W. 1, which has almost remained un-controverted, amply discloses as to how the incident has taken place and the role of each of the accused in committing the offence.

15. The evidence of P.W. 1 is supported by the evidence of P.W. 2. He has stayed in the house of the deceased on previous day of the incident. However, he left the house of the deceased at 7.30 a.m. on 2.7.2006 for the purpose of purchasing a pair of bullocks in Hanike market. According to P.W. 2 after purchasing a pair of bullocks, he was taking the said bullocks to his village by walk; when he reached near the place of incident, this incident was going on and he was standing at a distance of about 50 feet from the place of incident. He has also deposed about the complicity of each of accused Nos. 1 to 4 in the incident in question. He has specified that accused Nos. 1 to 4 assaulted deceased and P.W. 1 about 12 to 13 times with choppers mercilessly. He has also deposed about damage caused to the car of the deceased.

16. In the cross-examination, it is brought out by defence that P.W. 2 did not disclose about incident in question before the Police for about 37 days. It is not

in dispute that the statement of P.W. 2 is not recorded by the Police for about 37 days from the date of incident. However, P.W. 2 has clarified that he told about the incident with his family members as well as his relatives and neighbours. Except the aforementioned material, no other material is forthcoming from the cross-examination of P.W. 2 to disbelieve his version. The effect of belated recording of statement will be discussed by us in the succeeding paragraphs.

17. On going through the evidence of PWs. 1 and 2, we are of the clear opinion that their evidence is consistent, cogent and reliable. The evidence of P.W. 2 fully supports the case of the prosecution as well as P.W. 1, who is the injured eye witness.

18. In the cross-examination at paragraph-17 of P.W. 2, the defence practically admits the presence of P.W. 2 on the spot. The defence has put suggestion to P.W. 2 that he has stated before the Police that the blood was flowing on the scene of offence and that he has seen the deceased and P.W. 1 lying on the tank bund; it is also suggested by the defence that P.W. 2 has stated before the Police that he did not come near the scene of the offence, since it was a case of murder. Thus, the defence would practically admit the presence of P.W. 2 on the spot. As aforementioned, except making the suggestion which is admitted by P.W. 2 that his statement is recorded after 37 days, no other material is forthcoming to disbelieve the version of P.W. 2. The evidence of PWs. 1 and 2 fully supports the case of the prosecution.

19. The versions of PWs. 1 and 2 are supported by the evidence of PWs. 3 and 4.

P.W. 3 has deposed about last seen circumstance inasmuch as he has seen accused Nos. 2, 3 and 4 along with the deceased and P.W. 1 near the scene of offence and that he also talked with accused Nos. 2, 3 and 4 while going in Maruthi car; P.W. 3 has deposed that he was taken by P.W. 1 and the deceased in their Maruthi car to mediate between two family members and to get the matter compromised and while they were so proceeding, accused Nos. 2, 3 and 4 made to stop the car and consequently, P.W. 1 stopped the car. P.W. 1, deceased and accused Nos. 2, 3 and 4 talked with each other. Thereafter, P.W. 1, deceased and accused Nos. 3 and 4 alongwith P.W. 3 started to proceed towards the village on the request of accused Nos. 3 and 4 for talks. However, in the meanwhile accused No. 4 received the call and thereafter accused No. 4 told the deceased and P.W. 1 that he is required go to Chikkamagalur to see accused No. 5 (wife of accused No. 1), who is undergoing scanning test and he assured of compromise subsequently. Since P.W. 3 felt that there would be delay, he left the company of accused as well as the deceased and proceeded towards Belur. The evidence of P.W. 3 thus makes it clear that he has seen accused Nos. 2, 3 and 4 near the scene of offence along with P.W. 1 and deceased and that the accused came in the auto-rickshaw driven by P.W. 4. Practically, no material is found in the cross-examination of P.W. 3 so as to discard his evidence; P.W. 3 is a political leader in the District and only on that ground his evidence cannot be disbelieved. Since he was a political leader and the leading member of the locality, the people may

approach him for getting disputes mediated. Therefore, the evidence of P.W. 3 that he accompanied accused Nos. 2, 3 and 4, P.W. 1 and the deceased appears to be plausible.

The case of the prosecution is further supported by P.W. 4 - the driver of auto-rickshaw, in which accused Nos. 2, 3 and 4 were travelling. He is an independent witness. He is only a driver of auto-rickshaw, which was hired by accused Nos. 2, 3 and 4. He was from the village of accused Nos. 1, 3 and 5, who were the brothers inter se. According to P.W. 4, accused Nos. 2, 3 and 4 hired his auto-rickshaw at about 1.30 p.m. on the date of incident and told him that they would go to Magadi hand-post. The fare fixed by P.W. 4 was Rs. 100/-; having agreed for the same, accused Nos. 2, 3 and 4 travelled in the autorickshaw of P.W. 4; while they were proceeding towards Magadi hand-post, Maruthi car driven by P.W. 1 along with the deceased came from the opposite direction; thereafter accused Nos. 2, 3 and 4 talked with P.W. 1 and the deceased; he was there alongwith accused Nos. 2, 3 and 4 upto 2.15 p.m; thereafter, he left the company of accused at 2.30 p.m. and went back to Chikkamagalur; the evidence of P.W. 4 also makes it clear that accused Nos. 2, 3 and 4 were near the scene of offence and were with P.W. 1 and the deceased during relevant point of time; even in the cross-examination, he has reiterated about accused Nos. 2, 3 and 4 travelling in auto-rickshaw and reaching Magadi hand-post and the presence of the deceased as well as P.W. 1 near the scene of offence etc.

20. From the aforementioned, it is clear that ocular testimony, more particularly the evidence of P.W. 1 is fully supported by the version of P.W. 4, who has deposed about last scene of offence. It is made clear by PWs. 3 and 4 that accused Nos. 2, 3 and 4 talked with the deceased as well as P.W. 1 near the scene of offence, both these witnesses have seen the accused, the deceased as well as P.W. 1 just prior to the incident in question.

21. P.W. 8 is the younger brother of the deceased and P.W. 1. He has deposed about the motive for commission of offence as well as he along with C.W.6 reaching the spot within five minutes of the incident in question. He shifted P.W. 1 and the deceased to Chikkamagalur Government hospital immediately after the incident and thereafter, he shifted the injured P.W. 1 to Manipal hospital. Of course, P.W. 8 has made certain improvements in his evidence to show that he has also seen part of the incident. Such improvements are to be eschewed from consideration inasmuch as he is not an eye witness to the incident. But, the fact remains that he shifted the victims, who had sustained injuries in the incident in question. The statement of P.W. 8 is recorded after two months of the incident; merely because his statement is recorded belatedly, the same cannot be disbelieved. The wound certificate (history) clearly discloses that P.W. 8 accompanied injured P.W. 1 to Mallegowda District Hospital, Chikkamagalur. It is also not in dispute that he shifted the victim to the hospital. Moreover, he is not an eye witness to the incident. Thus, recording of the statement of P.W. 8 after two months of the incident does not make any difference to the case of the

prosecution.

22. During the course of investigation, the Police officials have seized the blood stained clothes of the deceased, injured P.W. 1, blood stained shoes of accused Nos. 3 and 4 under mahazars. All these articles, including shoes of the accused were sent for Forensic Science Laboratory for examination. Ex. P41 is the report of Forensic Science Laboratory. The said report discloses that totally 12 items were sent for examination. Almost all the items except item No. 8 i.e. control mud were stained with blood. Ex. P47 - Serology Report further makes it clear that all the items, except item No. 7 were stained with "B" group of human blood.

23. From the aforementioned expert's opinion it is clear that "B" Group human blood was found not only on the clothes of the deceased, but also on the shoes of accused Nos. 3 and 4. If really, accused Nos. 3 and 4 were not to be on the spot, there was no reason as to why the blood stains of the deceased should find place on their shoes.

24. It is relevant to note that Ex. P1, the complaint was recorded in the presence of Taluka Executive Magistrate P.W. 19 in the hospital. P.W. 31 is the Police official, who recorded the statement of the injured in the hospital in the presence of Taluka Executive Magistrate.

25. We have already mentioned supra that much is commented by the defence on the question of belated recording of the statement of P.W. 2 during the course of investigation. It is no doubt true that the statement of P.W. 2 is recorded after about 37 days of the incident in question. It is also true that he was known to the family of the deceased and P.W. 1. The natural conduct of P.W. 2 ought to have been to talk about the incident with the family members of the deceased, within a reasonable period, after the incident in question. However, P.W. 2 has made it clear that after seeing the incident he went back to his village along with bullocks he purchased and told about the incident to his family members, relatives and neighbours. It is also made clear in the cross-examination of P.W. 2 that as this was a case of murder, he did not try to come near the scene of offence though he was seeing the offence standing about 50 ft. away from the scene of offence. Ex. P1-complaint lodged by P.W. 1 does not disclose about the presence of P.W. 2 on the scene of offence. However, in the evidence, P.W. 1 has deposed that one person was standing along with bullocks about 50 ft. away from the scene of offence and later he came to know that such person was P.W. 2. The presence of P.W. 2 though was not stated in the complaint lodged by P.W. 1 at Ex. P1, he has stated about the presence of P.W. 2 in his further statement recorded during the course of investigation. It is amply made clear by P.W. 1 himself that he was severely injured and certain of the material were not meticulously stated by him in his complaint Ex. P1; as he had seen the murder of his brother, he was under utter shock and therefore, he could not disclose every minute detail of the incident in question. Exs. P42 and P44 amply disclose that P.W. 1 has sustained number of injuries including grievous injuries and has taken treatment in Manipal Hospital for more than one month and also underwent

number of operations. Therefore, it is not unnatural on the part of P.W. 1 in not disclosing every minute detail of the incident in question before the police, immediately after the incident. Moreover, D.W. 2, the defence has admitted the presence of P.W. 2 on the spot as is clear from paragraph 17 of the deposition of P.W. 2 in his cross-examination. When the defence itself admits the presence of P.W. 2 on the spot, mere belated recording of statement will be of no consequence.

26. The question of delay in examining a witness during investigation is material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a got-up witness to falsely support the prosecution case. It is essential that the investigating officer should be asked specifically about the delay and the reasons therefor. The evidence of a witness does not become untrustworthy merely because he was examined after some delay by the investigating officer. In the matter on hand, we have already mentioned supra that the defence has practically admitted the presence of P.W. 2 on the spot. Moreover, the evidence of P.W. 2 clearly supports the version of P.W. 1 who is the injured eyewitness. It could have been such that the investigation agency for the purpose of introducing got-up witness to falsely support the case of the prosecution has generated the version of P.W. 2. But in the light of the fact that P.W. 2 is not the sole eyewitness to the incident in question and as the case of the prosecution is mainly based on the evidence of injured eyewitness P.W. 1, supported by the evidence of P.Ws. 2, 3 and 4 apart from other circumstances, we are of the clear opinion that the investigating agency did not create the statement of P.W. 2 subsequently only for the purpose of introducing got up witness to falsely support the prosecution case. P.W. 2 who happened to be at the scene of occurrence has narrated the occurrence vividly. The defence has not brought anything tangible to impeach the testimony of P.W. 2 and hence, delay in examining P.W. 2 by the investigation officer ipso facto cannot be a ground to discard his testimony, moreover, his testimony is fully corroborated by reliable evidence of injured eyewitness.

27. The first information is not an encyclopedia to contain all minute details. Since the complaint is lodged while the complainant was taking treatment in hospital, in as much as, he had sustained more than 10 injuries all over the body, it is but natural for him to omit certain minute details in his complaint. The complaint is practically meant for setting the law into motion. There is no hard and fast rule that names of all the witnesses, more particularly, the eyewitnesses, should be mentioned in first information report. Deficiencies of the investigation cannot be a ground to discard the prosecution version. The evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there is no mention of minor details in the first information report, the effect of the evidence tendered by injured witness P.W. 1 cannot be washed away. Minor discrepancies do not corrode the credibility of otherwise acceptable evidence. We do not find absolutely any reason to disbelieve the version of P.W. 1

who is the injured eyewitness. It is settled position in law that omission to mention the names of assailants in the requisition memo perforce does not render prosecution version brittle. Justice should not be made sterile by exaggerated adherence to rule of proof. The benefit of doubt must always be reasonable and not fanciful.

28. The learned advocates for the defence however tried to convince the Court that accused Nos. 1 and 2 only assaulted the deceased, whereas, accused Nos. 3, 4 and 5 have assaulted P.W. 1. Such contention also cannot be accepted. Names of all the accused are found in the FIR. Even the history supplied by the injured at the time of admission to the hospital discloses the names of Accused Nos. 1, 3, 4, 5 and others. Though name of accused No. 2 is not specifically mentioned in the history, since the word "others" is used, the same cannot be made much of by the defence. Specific overt acts are attributed to accused Nos. 1 to 4. Specifying part played by each accused is not possible for the witnesses, more particularly, for the injured witness who has sustained severe injuries, where there are several accused. The accused were armed with lethal weapons; they started assaulting P.W. 1 and deceased in a group and all of them proceeded to participate in the attack. Accused No. 1 had carried the weapons in the goods autorickshaw, which were taken by accused No. 2 and distributed among accused Nos. 1 to 4. The very fact that the deceased and P.W. 1 were waylaid by accused Nos. 2, 3 and 4 till accused No. 1 came to the spot with the weapons would clearly go to show that all the accused Nos. 1 to 4 shared the common intention to attack and kill the deceased and P.W. 1. Merely because accused Nos. 2, 3 and 4 were not armed when they met the deceased and P.W. 1 for the first time, they cannot be termed as innocent, more particularly, when all of them took out choppers from the goods autorickshaw of accused No. 1 and assaulted the deceased as well as P.W. 1.

29. As mentioned supra, accused Nos. 3 and 4 called the deceased over his mobile phone on the previous night to come to Chikkamagalur for compromise; accordingly, the deceased went along with P.W. 1 (injured) towards Chikkamagalur in a car; however on the midway accused Nos. 2, 3 and 4 came in an auto-rickshaw; after few minutes, accused No. 4 was talking with some person on mobile phone; accused No. 1 arrived at the scene in a goods" auto along with weapons; accused Nos. 1 to 4 collectively took out the weapons from the goods" auto of accused No. 1 and mercilessly assaulted P.W. 1 as well as the deceased. Thus, it is clear that it may not be possible for the injured eye witness to bifurcate the individual overt act of accused persons, more particularly, when he was severely beaten and the deceased was done to death before him. The incident must have ended within few minutes and consequently, P.W. 1 was under utter shock. With this background, he would not have given the individual overt act meticulously either in FIR - Ex. P1 given within about 45 minutes of the incident in question or in his subsequent statement. Though certain overt acts are not specified by P.W. 1 in his complaint as well as in his deposition before the Court, the Court can visualize that under given circumstances, homogeneously

that the injured were severely beaten by the accused. However on going through Ex. P1 and evidence of PWs. 1 and 2, it is amply clear that all the accused assaulted both the deceased as well as the injured mercilessly with choppers. The common intention on the part of accused Nos. 1 to 4 is amply proved by the prosecution. Having regard to the aforementioned facts and circumstances, all of them have pre-planned about the crime in question; they called the deceased and P.W. 1, who were at remote place on the guise of compromise talks; all the accused came to the said spot and took out the weapons hidden in the goods" auto of accused No. 1 and thereafter all the accused assaulted the deceased and P.W. 1. All these facts would clearly show the common intention on the part of the accused Nos. 1 to 4 not only to commit the murder of the deceased Shivakumar but also to cause grievous injuries with the intention of taking away the life of the injured P.W. 1. Therefore, the provisions of Section 34 of IPC are fully applicable to the facts of this case.

30. However, we find that the evidence as against accused No. 5 Smt. Renuka is not sufficient to convict her for the offences with which she was charged. It is no doubt true that the witnesses have deposed about the presence of accused No. 5 and about her instigation. However, on meticulous perusal of the material, we are of the clear opinion that the trial Court is justified in acquitting accused No. 5, more particularly, when the evidence as against her is shaky and as there is every possibility that she might have been implicated for wrong reasons or because of family disputes.

31. As aforementioned, the defence has put forth the plea of alibi in so far as accused No. 2 is concerned. Three witnesses are examined on behalf of the accused.

D.W. 1 is the lady doctor working in Primary Health Centre, Rajajinagar, Bangalore. D.W. 2 is a Manager working in Khar Automobile shop, Bangalore, whereas, D.W. 3 is the Proprietor of Maalik Auto Diesel Works, Belur. D.W. 3 has turned hostile to the defence. Even in the cross-examination nothing worth is elicited by the defence. Practically, thus the defence relies upon the evidence of D.Ws. 1 and 2 to contend that accused No. 2 was in Bangalore and not on the scene of offence near Chickmagalur.

D.W. 1, as aforementioned, is the Doctor working in Primary Health Centre, Rajajinagar, Bangalore. She has deposed that she had given the chit as per Ex. D3 prescribing certain medicines. On 1.7.2006 She has also given certificate through her office as per Ex. D4, which is signed by her. According to D.W. 1 one Mr. Nagaraj, S/o. Basappa had come to the hospital on 1.7.2006 on the pretext that he is suffering from fever; after getting him examined, she has issued a prescription letter as per Ex. D3 and the certificate as per Ex. D4; the said Nagaraj was advised to take rest for two days; however, in the examination-in-chief itself she has made it clear that it would be difficult to identify Nagaraj S/o. Basappa who is the accused person before the trial Court, since the said incident had occurred about 5 years prior to the deposition. She has also further admitted

that on 1.7.2006 by the time she examined Nagaraj she had already examined 29 patients. In the cross-examination she has admitted that she is the only Doctor working in Primary Health Centre, Rajajinagar. Apart from her, a group "D" employee is working. There is no mention of timing in Exs. D3 and D4 as to at what time Nagaraj took treatment on 1.7.2006; she does not remember as to whether she advised Nagaraj to take rest for two days. The age of the patient is also not mentioned in Exs. D3 and D4. The ink of the pen used in Exs. D3 and D4 are different; further, even the handwriting as found in Ex. D4 is different from the handwriting found in Ex. D3; Ex. D4 mentions that Nagaraj is the owner of Annapurneshwari bus; the signature of Nagaraj or anybody is not found on Ex. D4 though a place is meant for taking the signature of the patient. She clearly admits that even when an unidentified unknown person comes with the name of Nagaraj, the outpatient slip would be issued in the name of Nagaraj; it is quite possible that Exs. D3 and D4 must have been got prepared from D.W. 1 by presenting some other person as Mr. Nagaraj(accused No. 2) to avoid the criminal prosecution. The evidence of D.W. 1 will not help the defence at all. Firstly, even according to D.W. 1 one Mr. Nagaraj who is the owner of Annapurneshwari bus has taken treatment from Rajajinagar Hospital, Bangalore on 1.7.2006. The incident has taken place on 2.7.2006 at 2.30 p.m. near Chickmagalur, which is about 3-4 hours journey from Bangalore. Even assuming that accused No. 2 had taken treatment on 1.7.2006, that does not amply prove that he could not have traveled for 3-4 hours to reach Chickmagalur on 2.7.2006. The plea of alibi can be accepted only if it is done by unimpeachable evidence by the accused that he could not have been present near the scene of offence during the relevant point of time since he was elsewhere during the relevant point of time.

The evidence of D.W. 2 is also of no help to the defence, in as much as according to him, a bill for Rs. 13,750/- was issued from his shop as per Ex. D5 in the name of Sri. H.B. Nagaraj, S/o. Basappa, R/o Hiremagalur, Chickmagalur District and the said bill is dated 3.7.2006 in respect of the vehicle bearing No. KA-02/5552. Even believing the version of D.W. 2 at the must it can be said that accused No. 2 was present in Bangalore on 3.7.2006 i.e., on the next date of the incident in question. There was no problem for accused No. 2 to travel from Chickmagalur to Bangalore for about 3-4 hours to reach Bangalore. Merely because accused No. 2 has purchased a spare part from the shop of D.W. 2 on the next date of the incident, his presence on the spot on 2.7.2006 cannot be disbelieved. Therefore, accused No. 2 has not proved his defence of alibi.

32. On going through the entire material on record and on the basis of discussions made supra, we are of the clear opinion that the trial Court is justified in convicting accused Nos. 1 to 4 for the offences with which they were charged. The trial Court is also justified in acquitting accused No. 5, since the prosecution has not proved its case beyond reasonable doubt as against her.

33. In view of the same, all the appeals filed by the convicted accused Nos. 1 to

4 as well as the appeals filed by the victim and the State, are liable to be dismissed. Accordingly, they stand dismissed.

We place on record the valuable assistance rendered by Sri. Vinayaka N Urankar, learned Amicus Curiae. Hence, the registry is directed to pay Rs. 10,000/- to the learned Amicus Curiae.