
(2011) 03 AP CK 0005
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 954 of 2007

State of A.P.

APPELLANT

Vs

Putchalapalli Naresh Reddy and Others

RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235(1), 235(2), 239, 313, 428
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2011) 03 AP CK 0005

Hon'ble Judges : V. Suri Appa Rao, J;V. Eswaraiah, J

Bench : Division Bench

Advocate : Public Prosecutor High Court of A.P, for the Appellant; C. Padmanabha Reddy Representing P. Ganga Rami Reddy, for the Respondent

Final Decision : Allowed

Judgement

V. Suri Appa Rao, J.—The State of Andhra Pradesh, represented by the Public Prosecutor and one Mudi Krishna Reddy, brother of the deceased Mudi Parandhami Reddy, filed these criminal appeal and criminal revision case, respectively, against the judgment of acquittal dated 27-10-2006 in Sessions Case No. 138 of 1998 on the file of the III Additional District and Sessions Judge (Fast Track Court), Nellore, Nellore district, whereby the accused 1 to 20 who were charged for the offences under Sections 147, 148, 302, 307 and 326 of IPC, Section 307 read with Section 149 of IPC and Section 326 read with Section 149 of IPC for causing the death of Mudi Parandhami Reddy and for causing injuries to P.W.3 P. Murali Reddy and L.W.2 P. Rajagopal Reddy and attempting to kill them, were found not guilty for the said charges and they were acquitted u/s 235(1) of Code of Criminal Procedure

2. Aggrieved by the order of acquittal, the State as well as the brother of the deceased filed these criminal appeal and criminal revision case necessitating this Court to dispose of both the matters by a common judgment.

3. The relevant facts leading to these criminal appeal and criminal revision case

are as follows:

There are two groups in Mettu village, Chittamur Mandal of Nellore district. One group is headed by Putchalapalli Parandhami Reddy, who belongs to the Telugu Desam Party and the rival group is headed by Mudi Parandhami Reddy, who belongs to the Congress-I Party. Several cases are pending against each other. Accused No. 1 is the leader of his group and accused 2 to 20 are his followers. While so, on 25-3-1992 Putchalapalli Parandhami Reddy, father of accused No. 1, was murdered and a case in Crime No. 2 of 1992 was registered. There was a Police-picket and tension prevailed between the two groups in the village till 1996. Accused No. 1 suspected that the deceased Mudi Parandhami Reddy was responsible for the murder of his father. There are disputes between one Pelluru Rajagopal Reddy (L.W.2), who is the brother of P.W.3 P. Murali Reddy and his brother accused No. 19 about the division of land in Survey No. 116. Therefore, P.W.3 and P. Rajagopal Reddy L.W.2 sought the assistance of the deceased Mudi Parandhami Reddy for mediation and they fixed up a date i.e. 25-11-1996 to settle the dispute. On 24-11-1996 P.W.3 and his brother P. Rajagopal Reddy L.W.2 requested P.Ws. 1, 2, 4 and 5 for coolie work for ploughing the land at about 8.30 a.m. At that time, the deceased Mudi Parandhami Reddy came and sat on the ridge. Then, accused No. 19, who is the brother of P.W.3 and P. Rajagopal Reddy L.W.2, and his son accused No. 20 came there and objected P.W.3 from ploughing the land. The deceased Mudi Parandhami Reddy tried to pacify them and warned accused 19 and 20. On that, accused No. 19 grew wild and left the place along with accused No. 20. On the next day i.e., on 25-11-1996 accused 19 and 20 collected accused 1 to 18 and all of them formed themselves into an unlawful assembly with a common object of killing the deceased Mudi Parandhami Reddy, came in a tractor armed with deadly weapons like battle-axes, knives, spears, axes and sticks and stopped the tractor in front of the house of accused No. 19. Thereafter, all the accused came to the land of P. Rajagopal Reddy L.W.2 through the sugarcane garden and surrounded the deceased Mudi Parandhami Reddy and attacked him with deadly weapons by raising cries "champandira naa kodukulni". Accused No. 1 axed the deceased with a battle-axe on the head. As a result the deceased fell down with bleeding injuries. When P.W.3 and P. Rajagopal Reddy L.W.2 came to the rescue of the deceased they were also beaten. Accused No. 2 beat P.W.3 with the butt end of chillakathi (pick-axe) on the back side. Accused No. 3 beat P.W.3 with the butt portion of the axe on the right hand. P.W.3 out of fear came to a distance to save his life and requested the accused not to kill them. After the deceased fell down, all the accused beat him indiscriminately all over his body with deadly weapons. Accused No. 3 hacked the deceased with an axe on the head. Accused 4 and 5 stabbed the deceased with bichuvas (knives) on the left side of chest and underneath the left arm-pit. Accused 6 and 7 speared on the left side back portion of the deceased. Accused No. 8 stabbed the deceased with a chillakathi (pick-axe) on the left ear and abdomen. Accused No. 9 speared on the left side of chest portion and on the umbilicus. Accused No. 10 beat with a stick on the

left temple of the deceased. Accused No. 11 stabbed the deceased with a chillakathi (pick-axe) on the left side of chest and left temple. Accused No. 12 beat the deceased with a battle-axe on the head. Accused No. 12 hacked L.W.2 P. Rajagopal Reddy with a battle-axe on the head and when he fell unconscious, the other accused beat him. When P.W.6 came to the rescue of the deceased, P.W.3 and L.W.2 P. Rajagopal Reddy, he was threatened by the accused and was pushed aside. The deceased died on the spot with multiple injuries. After that, all the accused went away in the tractor. This was witnessed by L. Ws.15 to 17 Paricharla Venu, Vatturu Venkaiah and Vakati Shyamsundar Reddy. Later, the injured were taken to the Government Hospital, Vakadu in a tractor and as the doctor was not available there, they were shifted to the Government Hospital, Gudur. As the condition of L.W.2 P. Rajagopal Reddy was precarious, he was shifted to S.V.R.R. Hospital, Tirupathi. On receipt of the hospital intimation, P.W.14 the Inspector of Police, Gudur visited the Government Hospital and recorded the statement of P.W.3 and registered the same as a case in Crime No. 175 of 1996 for the offences under Sections 147, 148, 307 and 302 read with Section 149 of IPC and transferred the same to Chittamur Police Station on the point of jurisdiction. The same was re-registered as a case in Crime No. 58 of 1996. On 26-11-1996 P.W.17 the Inspector of Police, Vakadu took up investigation, visited the scene of offence, seized the material objects in the presence of punch witnesses P.W.9 and another. On 26-11-1996 the II Additional District Munsif, Tirupati recorded the dying declaration of L.W.2 P. Rajagopal Reddy at the Government Hospital, Tirupati. P.W.13 Dr. M.C. Narasimhulu, Civil Assistant Surgeon, Government Hospital, Gudur treated the injuries of P.W.3 and L.W.2 P. Rajagopal Reddy and issued wound certificates. P.W.17 the Inspector of Police, Vakadu after conducting inquest over the body of the deceased Mudi Parandhami Reddy, sent the dead body to the Government Hospital. P.W.13 also conducted post-mortem examination over the body of the deceased Mudi Parandhami Reddy. Subsequently, the accused were arrested and blood-stained weapons were seized under a cover of mediators' report and after completion of the investigation, P.W.17 the Inspector of Police filed charge-sheet.

4. The learned III Additional District and Sessions Judge, Nellore framed charges - under Sections 147, 148 and 302 of IPC against all the accused, under Sections 307 and 326 of IPC against accused 2, 3 and 12, and u/s 307 read with Section 149 of IPC and Section 326 read with Section 149 of IPC against accused 1, 4 to 11 and 13 to 21. The accused pleaded not guilty.

5. The prosecution in order to prove the charges against the accused, examined P.Ws. 1 to 17 and relied on Exs.P-1 to P-20 and M.Os. 1 to 16. The accused examined D.Ws.1 to 6 and marked Exs.D-1 to D-12.

6. Considering the evidence on record and after hearing, the learned III Additional District and Sessions Judge, Nellore found all the accused not guilty for the offences with which they were charged.

7. According to the prosecution, the deceased Mudi Parandhami Reddy died due

to the injuries caused by the accused and that the death of the deceased was homicidal. To prove the fact that the death of the deceased was homicidal, the prosecution examined P.W.9 who acted as a punch witness and attested Inquest report under Ex.P-5 during inquest over the body of the deceased, P.W.13 Dr. M.C. Narasimhulu, Civil Assistant Surgeon, Government Hospital, Gudur, who conducted post-mortem examination over the body of the deceased and issued Ex.P-13 post-mortem certificate and P.W.17 the Inspector of Police who conducted inquest over the body of the deceased.

8. P.W.9 has stated in his evidence that about 8 years back himself, one Lalapeta Ramakrishnaiah L.W.25 along with the Police went to the scene of offence situated in the fields of one Rajagopal Reddy L.W.2 in Thimmareddyvagu. The Police prepared Ex.P-4 observation report. After that, the Police conducted inquest panchanama over the body of the deceased at the scene of offence. During inquest they noticed multiple injuries on the body of the deceased. They all opined that the deceased died due to multiple injuries sustained by him. He also attested Ex.P-5 inquest panchanama conducted by the Police.

9. P.W.13 Dr. M.C. Narasimham, Civil Assistant Surgeon, Government Hospital, Gudur has stated that on 26-11-1996 he received requisition from the Inspector of Police, Chittamur to conduct post-mortem examination over the body of the deceased. Accordingly, on the same day at 11 a.m., he started post-mortem examination over the dead body and found the following 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 congestion present. 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. Sub dural haematoma 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 3th 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 mamillary 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 litres. 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.

He is of the opinion that the deceased would have died of shock due to head injury and injury to the brain and heart and other multiple injuries and hemorrhage. He further stated that Ex.P-3 is the post-mortem certificate issued by him.

10. P.W.17 the then Inspector of Police, Vakadu Police Station deposed that on 25-11-1996 he visited Mettu village at about 2 p.m. By that time the Sub Inspector of Police, Kota, Chittampur, Ozili and Gudur Rural Police Stations were present. Police-picket was also arranger. Later, he came to know that one Mudi

Parandhami Reddy was murdered in Thimmareddyvagu fields. Immediately he rushed to the scene of offence and found the body of the deceased with multiple injuries in a pool of blood. After receiving a copy of FIR in this case he took up investigation. He again visited the scene of offence, prepared rough sketch of the scene of offence duly showing photographical and physical features. He also seized blood-stained earth and control earth, and got photographed the scene of offence. Thereafter, he held inquest over the body of the deceased at the scene of offence in the presence of P.W.9 and others. During inquest he also examined the witnesses. As per the opinion of the panchayatdars and as per the statement of the witnesses, all of them opined that the death of the deceased was homicidal.

11. Thus, in view of the evidence of P.Ws. 9, 13 and 17 and as per the inquest report Ex.P-5 and post-mortem certificate Ex.P-13, the death of the deceased was found to be homicidal and there is no dispute about the homicidal death of the deceased.

12. It is the case of the prosecution that P.Ws. 1 to 7 witnessed while the accused attacking the deceased near the land of P. Rajagopal Reddy L.W.2.

13. Out of the eyewitnesses examined by the prosecution, P.W.1 is Vakati Ramanaiah and P.W.2 is Rayapati Venkata Ramanaiah, who were engaged by P.W.3 and L.W.2 Rajagopal Reddy for ploughing the disputed land. P.W.3 is Pelluru Murali Reddy, brother of P. Rajagopal Reddy L.W.2, who were having disputes with their another brother accused No. 19 and who witnessed the incident. P.Ws. 4 and 5 are Bandila Muthyalaiiah and Rayapati Kotaiah, who were also engaged by P.W.3 for ploughing his land and who witnessed the incident. P.Ws. 6 and 7 went to the disputed land along with the deceased and others and who witnessed the incident.

14. P.Ws. 1 and 2 who witnessed the incident did not support the prosecution case and they turned hostile to the prosecution and both of them have stated that they were never engaged by P.W.3 or Rajagopal Reddy as coolies for ploughing the land and they did not witness any incident and they did not know anything about the cause of death of Mudi Parandhami Reddy.

15. P.W.3 has stated in his evidence that Rajagopal Reddy L.W.2 is his elder brother and Karunakar Reddy L.W.3 is his son. Accused No. 19 is also his elder brother and accused No. 20 is the son of accused No. 19. Himself and Rajagopal Reddy L.W.2 are residing jointly. The other brothers accused No. 19 and another brother Dhanunjaya Reddy were partitioned from the joint family and residing separately and there are disputes between him and Rajagopal Reddy L.W.2 on one side and accused 19 and 20 on the other with regard to the land in Survey No. 116 of Thimmareddypalem.

16. P.W.3 has further stated in his evidence that on 24-11-1996 himself and his brother Rajagopal Reddy went to Mettu village to the house of deceased at about 5 p.m., and requested him to mediate the land dispute between them and

accused No. 19 and another brother Dhanunjaya Reddy. On that the deceased agreed to come on the next day i.e., on 25-11-1996 to the fields for settlement of disputes among the brothers. On the same day he went to Harijanawada of Mettu village for engaging coolies and engaged P.Ws. 1, 2, 4 and 5 to plough the lands on 25-11-1996. On the same day evening they returned back to Thimmareddyvagu. On 25-11-1996 at 7 a.m., himself, his brother Rajagopal Reddy L.W.2, Karunakara Reddy L.W.3, his senior paternal uncle Narayana Reddy and one Bangaraiah went to their fields for ploughing the land and started ploughing the land. At about 8 a.m., the deceased, P.Ws. 6 and 7 and Mohan L.W.11 came to the land. The deceased sat on the ridge. There is a sugar cane garden to the north of the ridge. Himself, his brother Rajagopal Reddy were talking with the deceased who sat on the ridge. After half an hour, his elder brother accused No. 19 and his son accused No. 20 came to the lands and asked them to stop ploughing the land and raised objection. The coolies stopped ploughing the land. Meanwhile the deceased being elder intervened and told them that the disputes will be settled later and asked the coolies to plough the land. On that accused 19 and 20 left the fields. The coolies ploughed the land as usual and they were again talking with each other. At about 10 a.m., all the accused came there armed with deadly weapons from sugar cane garden side i.e., from northern side. Accused No. 1 who was armed with a battle-axe raised cries as "champandira". By saying so accused No. 1 hacked the deceased on his head with the battle-axe, as a result of which the deceased fell down on the ground with bleeding injury. When he intervened, accused No. 2 who was armed with chilakathi beat him with reverse side butt end of the chilakathi on the back side of his head resulting a bleeding injury. Accused No. 3 who was armed with an axe gave a blow on the head of the deceased, resulting bleeding injuries. Immediately he (P.W.3) folded his both hands to accused No. 3. On that with the reverse of that axe he beat him on his left fore hand, resulting a bleeding injury. Accused No. 4 stabbed the deceased with a bitchuva on the left side of the chest and underneath the left arm-pit. Accused No. 5 stabbed the deceased with a bitchuva on the left side of chest and underneath the left arm-pit. Accused No. 6 stabbed the deceased with a spear on the left side back portion. Accused No. 7 stabbed the deceased with a spear on the left side back portion. Accused No. 8 stabbed the deceased with a chilakathi on the left ear and on the abdomen of the deceased. Accused No. 9 stabbed the deceased with a spear on the left side chest portion and also on amlicus. Accused No. 10 beat the deceased with a stick on his left tempo resulting contusion, due to which blood oozed out from the left ear of the deceased. Accused No. 11 stabbed the deceased with a chilakathi on the left side tempo near the left ear and also on the abdomen of the deceased. Accused No. 12 hacked the head of the deceased with a battle-axe. Then Rajagopal Reddy L.W.2 folded both hands as to why they are beating Parandhami Reddy who already died. Accused No. 2 then hacked Rajagopal Reddy with a battle-axe on his head, resulting a bleeding injury. On that, Rajagopal Reddy fell unconscious. Then P.W.6 came to their rescue but the accused pushed him aside. The other accused also beat the deceased indiscriminately with sticks and iron

rods, resulting multiple injuries. After the death of the deceased, the accused left the scene of offence.

17. P.W.3 further deposed that after 15 minutes one Devareddy Subramanyam Reddy brought a tractor to the fields. Himself, his brother Rajagopal Reddy and P.W.6 went to the Government Hospital, Vakadu for treatment. As there was no doctor at the hospital, Subramanyam Reddy again brought a car and took them to the Government Hospital, Gudur and he got admitted them in the hospital. As Rajagopal Reddy received a grievous injury, the doctor at the Government Hospital, Gudur referred him to Ruya Hospital, Tirupati by arranging an ambulance. While he was undergoing treatment at the Government Hospital, Gudur the Police came and recorded his statement. Ex.P-3 is the statement recorded by the Police. After that also he was again examined by the Police. He further stated that he can identify the weapons used by the accused at the time of offence. According to him, accused 1 and 2 were armed with battle-axes M.Os. 1 and 2, accused 6, 7 and 9 were armed with spears M.Os. 3 to 5, accused 2, 8 and 11 were armed with chilakathies each, which are M.Os. 6 to 8 and accused 4 and 5 were armed with bichuvas and they are M.Os. 9 and 10.

18. In the cross-examination, P.W.3 has admitted that the names of accused 13 to 20 were not mentioned in Ex.P-3 complaint. So also the names of P.Ws. 1, 2, 4 and 5 were not referred in Ex.P-3 complaint and also the role played by them. He denied the suggestion that himself and his son Karunakar Reddy were not present at the time of the alleged incident and that he did not receive any injuries. He also further denied that the injuries on his body are created as if he is present at the time of the alleged incident.

19. P.W.4 Bandila Muthyalaiah has stated in his evidence that the incident took place about 8 years ago. One day prior to the incident P.W.3 came to Harijanawada for coolies and called him, P.Ws. 1, 2 and 5 to plough his land on the next day as coolies. On the next day morning accordingly himself, P.Ws. 1, 2 and 5 went to Thimmareddyvagu for ploughing the land of P.W.3. When they were ploughing the land, P.W.3, Rajagopal Reddy L.W.2 and Bangaraiah L.W.8 were gathering waste gross. At about 8 or 8.30 a.m., the deceased, P.W.6, Mohan and Chenchaiiah came to the land of P.W.1 (may be to the land of P.W.3). After the arrival, P.W.3, Rajagopal Reddy L.W.2 and Karunakar Reddy L.W.3 went to the deceased. The deceased then sat on a ridge and they were talking with each other, himself and other coolies were ploughing the land. After half an hour, accused 19 and 20 came there and objected for ploughing the land. The deceased intervened and told them that there would not be any dispute among the brothers and asked P.W.1 to plough the land and that the disputes will be decided later. On that accused 19 and 20 went to their houses. On the same day at about 10 or 10.30 a.m., all the accused armed with deadly weapons came to the scene of offence. Accused No. 1 raised cries "champandira". By saying so, accused No. 1 hacked the deceased with a battle-axe on his head, due to which he fell down on the ground. When P.W.3 intervened, accused No. 2 beat P.W.3

with a chilakathi from butt side on the back side of the head. Accused No. 3 beat the deceased with an axe on the head of the deceased. Accused No. 3 beat P.W.3 also with butt end portion of the axe on his left hand. Accused No. 4 stabbed the deceased with a bitchuva on the left side of the chest. Accused No. 5 stabbed the deceased with a bitchuva on the left side of the chest and underneath the left armpit. Accused No. 6 stabbed the deceased on the left side back portion. Accused No. 7 also stabbed on the left side back portion of the deceased. Accused No. 8 hacked on the left ear and abdomen of the deceased. Accused No. 9 stabbed the deceased on the left side of the chest portion and also ambilcuss. Accused No. 10 beat the deceased with a stick on the left side of the temple. Accused No. 11 hacked the deceased with a chilakathi on the left side of temple and also on the left side of chest. Accused No. 12 hacked the deceased with a battle-axe on his head. When Rajagopal Reddy L.W.2 intervened, accused No. 12 hacked him with a battle-axe on the head. Due to that blow, Rajagopal Reddy had fallen down on the ground and become unconscious. The other accused pushed P.W.6 aside when he intervened and the accused left the place after the death of the deceased. The other accused also beat the deceased indiscriminately with rods and sticks. Out of fear they being coolies left the scene with their madakalu. P.W.3, Rajagopal Reddy L.W.2, P.W.6, Chemchaiah L.W.10 and Mohan L.W.11 were present at the scene of offence. On the next day he was examined by the Police at Harijanawada of Mettu village.

20. In the cross-examination, P.W.4 has stated that immediately after reaching the scene of offence, all the accused surrounded the deceased and started beating him and they did not allow P.W.3 to go to the deceased. He denied the suggestion that he did not go to the scene of offence on the alleged date of incident and deposed falsely at the instance of M. Krishna Reddy, brother of the deceased. According to him, P.W.6 was sitting at a distance of 5 feet away from the northern side of the ridge where the deceased was sitting.

21. P.W.5 Rayapati Kotaiah also stated in his evidence that one day prior to the incident P.W.3 came to Harijanawada for coolies for ploughing the land. He asked four nagallu to plough his land and that himself, P.Ws. 1, 2 and 4 went to the land for ploughing on the next day. By the time they went to plough the land, P.W.3, Rajagopal Reddy L.W.2, Karunakar Reddy L.W.3 and Narayana Reddy were already present at the fields. When they were ploughing the land, P.W.3 and his brother Rajagopal Reddy and Karunakar Reddy were collecting waste gross. At about 8 a.m., accused 19 and 20 came to the scene and objected for ploughing the land. The deceased also came to the scene even prior to the arrival of accused 19 and 20 to the fields and asked them to plough the land stating that the dispute will be settled later between the brothers. He also stated that the deceased, P.W.6, Mohan, Bangaraiah and Chennaiah together came to the land at about 8 a.m. After some time, accused 19 and 20 left the fields when the coolies were ploughing the land. At about 10 a.m., all the accused came from the sugar cane garden side. Accused No. 1 raised cries "champandira". By saying so, accused No. 1 hacked the deceased with a battle-axe on his head, due to which

he fell down on the right side. When P.W.3 intervened, accused No. 2 beat P.W.3 butt end of chilakathi on his back side. Accused No. 3 hacked the deceased with an axe on the head. When P.W.3 again intervened, accused No. 3 hacked P.W.3 with butt portion of the axe on his left hand. Accused No. 4 stabbed the deceased with a bitchuva on the left side of the chest and underneath the left armpit. Accused No. 5 stabbed the deceased with a bitchuva on the left side chest and also underneath the left armpit. Accused No. 7 stabbed the deceased with a spear on the left side back portion. Accused No. 8 stabbed the deceased with a chilakathi on the left ear and abdomen. Accused No. 9 stabbed the deceased with a spear on the left side of his chest portion. Accused No. 10 beat the deceased with a stick on the left temple. Accused No. 11 stabbed the deceased with a chilakathi on the left side of the chest and on the left side of the temple. Accused No. 12 hacked the deceased with a battle-axe on the head. When Rajagopal Reddy L.W.2 intervened, accused No. 12 hacked him with a battle-axe on the head. Due to that blow, he had fallen on the ground. When Veluru Gopal Reddy L.W.9 went to rescue, the accused pushed him aside. The accused indiscriminately beat the deceased with their arms and left the scene as the deceased died. Thereafter, himself and other coolies went to their houses.

22. In the cross-examination, P.W.5 stated that along with the coolies P.W.3 and Rajagopal Reddy L.W.2 also ploughed the land and totally 6 nagallu were used for ploughing the land on the date of incident. He stated that the accused surrounded the deceased and attacked him and indiscriminately beat the deceased and that the incident was completed within minutes. He denied the suggestion that he worked as farm servant under the deceased for some time. He also denied the suggestion that the accused are no way connected with the death of the deceased. He also further denied that except Rajagopal Reddy L.W.2, none were present at the time of the incident and the other witnesses including him were falsely planted in this case.

23. P.W.6 Velugu Gopal Reddy has stated in his evidence that one day prior to the death of the deceased, he was present at the house of the deceased along with Chenchiah L.W.10 and Mohan. At that time, P.W.3 and Rajagopal Reddy L.W.2 came to the house of the deceased and informed him that there was a dispute among the brothers and requested the deceased to mediate the dispute. On that, the accused told them that he will come on the next day morning to mediate the dispute. On the next day morning at about 7.30 or 8 a.m., himself, Chenchiah L.W.10, Mohan and the deceased went to Thimareddyvagu. Then, P.Ws. 1, 2, 4 and 5 were ploughing the land with nagallu. The deceased was sitting on the northern side of the ridge. Himself, 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. Meanwhile the deceased intervened and informed that the disputes will be settled later and asked them to plough the land. On that, accused 19 and 20 left the fields. On the same day at about 10 a.m., accused No. 1 came to the scene and hacked the deceased with a battle-axe on the head. After that, accused No. 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. Accused No. 5 stabbed the deceased on the chest. Accused No. 6 stabbed the deceased with a spear on the left side back portion. Accused No. 7 stabbed the deceased on the back side. Accused No. 8 stabbed the deceased on the left ear and also on the abdomen. Accused No. 9 stabbed the deceased on the left side chest portion. Accused No. 10 beat the deceased with a stick on the left temple. Accused No. 11 stabbed the deceased with a chilakathi on the left side of the chest and on the left tempo. Accused No. 12 beat the deceased with an axe on the head. When Rajagopal Reddy L.W.2 intervened, accused No. 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. Himself, 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.

24. P.W.6 has also stated in the cross-examination that after returning from Gudur to his house he did not go to the scene of offence as the body of the deceased was already shifted. He also did not go to the house of deceased after his return from Gudur and did not meet the relations or brother of the deceased. He further denied the suggestion that he did not go to Thimmareddyvagu on the date of incident. He further admitted that P. Ws.2 and 5 are brothers and P.W.2 was the farm servant of the deceased for about 15 years and P. Ws.2 and 5 belong to the group of the deceased.

25. P.W.7 Manneti Chanchaiah has stated in his evidence that one day prior to the incident at 4 p.m., when himself, Mohan L.W.11 and P.W.6 were present at the house of deceased, P.W.3 and Rajagopal Reddy L.W.2 came to his house and they requested the deceased to settle the land dispute among brothers. The deceased told them that he would come to Thimmareddyvagu in the next day morning to settle the dispute among the brothers. On the next day morning at about 8 a.m., himself, P.W.6, deceased and Mohan L.W.11 reached the fields of Thimmareddyvagu i.e., the lands of Rajagopal Reddy L.W.2 and P.W.3. Then P.Ws. 1, 2, 4 and 5 were ploughing the land with nagallu at that time. One N. Bangaraiah L.W.8 and Karunakara Reddy L.W.3 were gathering waste gross in the land. P.W.3 and Rajagopal Reddy L.W.2 were also ploughing the land. Himself and the deceased sat on a ridge. Meanwhile, P.W.3 and Rajagopal Reddy L.W.2 came there. Then all the accused were found formed into an unlawful assembly armed with chilakathies, spears, sticks and rods and axes and came to the field

from northern side of sugar cane crop. Accused No. 1 raised cries saying "champandira". By saying accused No. 1 axed the deceased with a battle-axe on the head, due to which the deceased turned towards the right side. When P.W.3 intervened accused No. 3 beat him with butt portion of the said axe on the left hand. Accused No. 4 stabbed the deceased with a bitchuva on the left side of chest and underneath the left armpit. Accused No. 5 also stabbed the deceased with a bitchuva on the left side of the chest and also underneath the left armpit. Accused No. 6 stabbed the deceased with a spear on the left side back portion. Accused No. 7 stabbed the deceased with a spear on the left side of back portion. Accused No. 8 stabbed the deceased with a chilakathi on the left ear and also abdomen. Accused No. 9 stabbed the deceased with a spear on the left side chest and also on umbilicus. Accused No. 10 beat the deceased with a stick on the left temple. Accused No. 11 stabbed the deceased with a chilakathi on the left side of chest and on the left temple. Accused No. 12 hacked the deceased with a battle-axe on the chest. When Rajagopala Reddy L.W.2 intervened, accused No. 12 hacked him with the same battle-axe on the head, due to which he fell down on the ground. When P.W.6 intervened, the accused pushed him aside and again the accused beat the deceased with sticks and iron rods indiscriminately and left the scene of offence with the arms. Rajagopal Reddy L.W.2 became unconscious. Parandhami Reddy died on the spot itself. Then he left the scene and reached Mettu village and informed the incident to Navaneethamma about the accused having murdered her husband M. Parandhami Reddy. Thereafter, he went to his house.

26. In the cross-examination, P.W.7 has stated that all the accused came to the scene of offence together at a time in a group and surrounded the deceased and started beating Parandhami Reddy with weapons indiscriminately and simultaneously. He denied the suggestion that he was not present at the house of Parandhami Reddy one day prior to the incident when P.W.3 and his brother visited the house of the deceased and requested him to settle the matter. He also denied the suggestion that he did not go to Thimmareddyvagu on the date of alleged incident along with the deceased and does not know as to how the deceased, P.W.3 and Rajagopal Reddy received injuries.

27. P.W.8 M. Navaneethamma, wife of the deceased, has stated in her evidence that one day prior to the incident at about 6 p.m., P. Ws.6 and 7 and Mohan L.W.11 were talking with her husband at their house at Mettu village. Then P.W.3 and Rajagopal Reddy L.W.2 came to their house and requested her husband to settle the land dispute among the brothers at Thimmareddyvagu. Her husband told them that he would come on the next day to settle the dispute. On the next day morning, the deceased, P. Ws.6 and 7 and Mohan L.W.11 went together to Thimmareddyvagu. Her husband informed her that he would come back from Thimmareddyvagu in the afternoon. On the same day at about 4 p.m., P.W.7 came and informed her that her husband was murdered at the lands of P.W.2 by accused No. 1 and his men with deadly weapons. Then her relatives and villagers of Mettu village took her to the scene of offence in a tractor. She noticed multiple

bleeding injuries on the dead body of her husband. She became emotional and lost consciousness and regained consciousness at the house of Rajagopal Reddy L.W.2. On the next day morning she was taken by the wife of P.W.3 and the wife of Rajagopal Reddy L.W.2 for inquest panchanama over the body of the deceased and she was examined by the Police. She identified the clothes of her husband as that of M.Os. 11 to 14.

28. In the cross-examination, she denied the suggestion that on the date of incident, P. Ws.6 and 7 and Mohan L.W.11 did not accompany her husband.

29. Accused 1 and 2 pleaded alibi before the trial Court and examined D. Ws.3 to 6 to prove alibi. Therefore, it is just and necessary to discuss the evidence produced by accused 1 and 2 on the plea of alibi.

30. As seen from the record during the course of examination u/s 239 of the Code of Criminal Procedure, at the time of framing of charges by the learned trial Judge, accused 1 and 2 have not taken any plea of alibi at the initial stage, only after the end of the trial when they were examined u/s 313 of the Code of Criminal Procedure, to explain the incriminating circumstances appearing against them, accused 1 and 2 have pleaded alibi.

31. In his Section 313 of the Code of Criminal Procedure., accused No. 1 has stated as follows:

On 23-11-1996 I along with A-2 went to Kota, since I have involved in a case in Cr. No. 34/1996 and I met the Advocate Sri Ramachandraiah and he asked us to come on Monday along with the sureties. A-2 directly went to Hyderabad from Kota informing me that he will return to Kota on Monday i.e., on 25-11-1996.

On 25-11-1996 in the morning along with my sureties, I went to the house of Mr. Chandrasekhar, Brother-in-law of the deceased Parandhama Reddy who was the V.A.O and got the solvency certificate and left the Mettu village and went to Kota and met our Advocate and our Advocate Mr. Ramachandraiah informed us the Judge was on leave and asked us to come on the next day. At that time, A2 also came to Kota. We stayed at Kota upto 12 noon at Court. From the Court, I left to my Junior Paternal Uncle's house. A-5 telephoned me at 7.00 P.M. and informed me that his parents were beaten and they were bringing them to Head Quarters Hospital, Nellore. Then, I went to Nellore Hospital and at 10-00 P.M. the Police at the Hospital apprehended me and others and we never confessed anything and this case is falsely foisted and we never involved in the offence. I have also got filed an application through my Misses to S.P. and D.G.P. and others that I was not involved in this case.

32. In his Section 313 of the Code of Criminal Procedure, accused No. 2 has stated as follows:

On 23-11-1996 I accompanied A-1 to our Advocate Ramachandraiah to Kota in connection with the case in Cr. No. 34/1996 and the Advocate advised us that A-1 has to bring two sureties. From Kota, I directly proceeded to Hyderabad and

informed A-1 that I will return to Kota directly Monday on 25-11-1996 from Hyderabad. I directly came to Kota Court and A-1 came to the Court along with two sureties. The Advocate Mr. Ramachandraiah informed us that the Learned Magistrate was on leave and asked us to come on Monday. We were there at Court upto 12 noon. From there around 2 or 3 P.M. I went to my house. I never did any offence and I have nothing to do with the present case.

33. Thus, according to accused 1 and 2 they were not present at the time of incident and they have not participated in the commission of offence.

34. D.W.3 Putchalapalli Mohan Reddy has stated in his evidence that one day prior to the death of deceased, accused No. 1 came to him and requested him to act as surety in one criminal case and on the date of offence in the morning at about 7 a.m., accused No. 1 came to him and took him to Kota Rajagopala Reddy D.W.4 to Chandrasekhara Reddy, Village Administrative Officer to obtain solvency certificate. Himself, Rajagopala Reddy D.W.4 and accused No. 1 requested the V.A.O., to issue solvency certificate to him and Gopala Reddy, who is also called as Kota Rajagopala Reddy. The V.A.O has issued a certificate to him and Rajagopala Reddy. Then himself and Gopala Reddy boarded a bus at Mettu village and got down at Kota. They all went to the house of D.W.5 Sri Ramachandra Rao, Advocate at Kota and by the time they reached the house of the advocate, accused No. 2 was also there. They reached the house of the advocate at 9 a.m. The advocate verified the solvency certificate and asked accused 1 and 2, himself and Gopala Reddy to come to the Court at Kota. Then they all went to the Judicial First Class Magistrate's Court, Kota at about 11 a.m. The advocate went inside the Court and again came out at about 11.30 a.m., and informed them that the Magistrate was on leave and asked them to come on the next day. Then all of them left the Court and went to Kota town. Then himself and Kota Gopala Reddy left Kota town and proceeded to their village on the bus and accused 1 and 2 stayed back at Kota. He further stated that in the morning 7 a.m., to around 12.30 p.m., accused No. 1 was with them and accused No. 2 was with them from 9 a.m., to 12.30 p.m.

35. In the cross-examination he has stated that he never stood as surety in any criminal case. He does not remember for how much amount the solvency certificate was taken by him and also does not know in which case he was intended to act as surety for accused No. 1. His evidence further shows that Kota town is at a distance of 5 to 10 kms., from their village Mettu and there are frequent buses. He denied the suggestion that he is a auto driver and he never took solvency certificate and accused 1 and 2 were never with them at Kota on that day and that he was deposing falsely to help the accused.

36. D.W.4 Kota Gopala Reddy, who is also called as Kota Rajagopala Reddy, has stated in his evidence that he learnt that the deceased died at Thimmareddyvagu about 10 years back. One day prior to the death of deceased, accused No. 1 came to him and requested him to act as surety in a criminal case and on the date of offence at 10 a.m., accused No. 1 came to him and took him and D.W.3

to one Chandrasekhara Reddy, V.A.O for obtaining solvency certificate. Himself and D.W.3 obtained solvency certificate. Around 9.30 a.m., himself and D.W.3 went to Kota to the house of Sri Ramachandra Rao, Advocate. Accused No. 2 was also present there. They handed over the solvency certificate to the advocate and he asked all of them to come to the Court. Then himself, D.W.3 and accused 1 and 2 reached the Court at 10.30 a.m. After 10.30 a.m., Sri Ramachandra Rao, Advocate came and went inside the Court office and after one hour he came back and informed them that the Judge was on leave and asked them to come on the next day. Then himself, D.W.3 and accused 1 and 2 came to bus-stand. Then accused 1 and 2 told them that they had work at Kota and went towards bazaar. Then himself and D.W.3 returned to their village.

37. In the cross-examination, he has stated that accused No. 1 is having a car even till today. Prior to the incident he never stood as surety in any criminal case for anybody. There is only one Court at Kota. At about 11 or 11.30 a.m., Sri Ramachandra Rao D.W.5 informed them that the Judge was on leave. He has not collected the solvency certificate from Sri Ramachandra Rao. He also denied the suggestion that accused 1 and 2 were not with him on the date of offence and accused No. 2 never accompanied him at Kota and that he was deposing falsely to help the accused 1 and 2.

38. D.W.5 Sri L. Ramachandra Rao, practising advocate at Kota, has stated in his evidence that he knows the deceased Mudi Parandhami Reddy and the accused 1 and 2 who belong to Mettu village. He further stated that accused No. 2 originally was in the group of the deceased. Since 1986 he used to appear on behalf of the deceased group. Accused No. 2 also used to come to his office along with the deceased. There are factions in Mettu village. Accused No. 2 after giving his daughter in marriage to accused No. 1, joined the group of accused No. 1's father and there was a case in Crime No. 34 of 1996 of Chittamur Police Station against accused No. 1 and others. In that connection, accused 1 and 2 came to him to Kota on 23-11-1996 at 3.30 p.m., for the purpose of surrender of accused No. 1 in Crime No. 34 of 1996 and then obtain bail. He told them to come along with sureties on 25-11-1996 along with solvency certificates. On 25-11-1996 around 8.45 a.m., to 9 a.m., accused 1 and 2 came to his office at Kota along with sureties. He prepared surrender application and bail application and verified the surety papers and advised them to come to the Court by 10.30 a.m. He went to the Court at 10.20 a.m., and found accused 1 and 2 at the Court premises. He asked them to stay there and went inside the Court. At 11.30 a.m., he came to know that the Magistrate was on leave and the Court staff informed him at 11.30 a.m., that the officer was on leave. Therefore, at 11.30 a.m., he called accused 1 and 2 at Court premises and informed that that the Magistrate was on leave and there is no urgency to surrender and obtain bail for accused No. 1 by going to in-charge court, Gudur, since the offence alleged against accused No. 1 is only u/s 324 of IPC. Then accused 1 and 2 left the Court along with the sureties. At that time he again went to the Court and there he learnt that the deceased Mudi Parandhami Reddy was murdered.

39. In the cross-examination, he has stated that he cannot identify the sureties brought by accused No. 1. He prepared surrender application and bail application and signed on the papers on 25-11-1996 but he does not remember whether he surrendered accused No. 1 later and he also does not remember whether he has filed the same papers along with solvency certificates by sureties at a later stage. On that day he has not filed the surrender application and bail application before the Criminal Bench Clerk at 10.30 a.m. Accused 1 and 2 are only his clients. He has no personal acquaintance or friendship with them. He further admitted that Crime No. 34 of 1996 of Chittamur Police Station was filed by the group of the deceased against accused No. 1. He denied the suggestion that accused 1 and 2 never met him on 23-11-1996 and on 25-11-1996 and he has not prepared any bail papers on their behalf and that he was deposing falsely due to his close association with accused 1 and 2.

40. D.W.6 P. Gopal Reddy is another practising advocate at Kota. According to him, on 25-11-1996 at about 10.20 a.m., he has seen accused 1 and 2 in the Court compound at the entrance of the Court Hall. He then questioned as to why they came to the Court. They informed him that they came to the Court for obtaining bail. Then he went to the Court and then to Bar Room. At 12 noon, the Court Clerk informed them that the Magistrate applied for leave. While leaving the Court around 12.10 p.m., he noticed accused 1 and 2 and others were talking with D.W.5 and one Venkateswarlu in the Court premises. He also stated that D.W.5 used to attend as an advocate for the deceased and also accused 1 and 2.

41. In the cross-examination, he stated that he cannot say whether there is any special reason for him to remember the date on which accused 1 and 2 and some of the accused met him at the Court and he is having acquaintance with accused 1 and 2 since 1990. He denied the suggestion that he never saw accused 1 and 2 on 25-11-1996 in the Court premises and deposing falsely to help them.

42. The learned trial Judge at paragraph 90 of the judgment observed that the accused 1 and 2 failed to discharge the initial burden of proving the plea of alibi.

43. According to D.W.3, on the date of death of the deceased Mudi Parandhami Reddy accused No. 1 came to him at 7 a.m., and took him and D.W.4 to the V.A.O Chandrasekhara Reddy to obtain solvency certificate, whereas D.W.4 has stated in his chief-examination itself that on the date of death of the deceased, accused came to him at 10 a.m., and took him and D.W.3 to Chandrasekhara Reddy, V.A.O., for obtaining solvency certificates. Therefore, by the evidence of D.W.4, it is clear that accused No. 1 approached him at 10 a.m., on the date of offence i.e., on the date of death of the deceased and all of them went to the house of their advocate D.W.5, who is residing at Kota which is at a distance of 5 to 10 kms., from Mettu village. But the evidence of the advocate D.W.5 shows that even between 8.45 a.m., and 9 a.m., on 25-11-1996 accused 1 and 2 came to his office at Kota along with sureties. But according to D.W.3, by the time himself, accused No. 1 and another surety D.W.4 went to the house of their

advocate D.W.5, accused No. 2 was already present there. As per the evidence of D.W.6, he saw accused 1 and 2 in the Court compound at 10.20 a.m., and also noticed accused 1 and 2 and other talking with D.W.5 at 12.10 p.m. But D.W.5 himself has stated that he informed accused 1 and 2 at 11.30 a.m., that the Magistrate was on leave and there is no urgency. After that, accused 1 and 2 left the Court along with the sureties. The evidence of D.W.5 clearly shows that he does not remember when he surrendered accused No. 1 after 25-11-1996 in Crime No. 34 of 1996 and also does not remember whether he filed the same papers along with the solvency certificates. When D.W.5 being an advocate could remember the date i.e., 25-11-1996 and time i.e., on the date of death of the deceased in which accused 1 and 2 were involved as per the complaint given by P.W.3. He is unable to remember the subsequent date when accused 1 and 2 were surrendered before the Court. Even if the Magistrate is on leave the advocate can file bail application and surety certificates in the office or he is not prevented from filing the bail application before the in-charge Court. The evidence of D.W.5 clearly shows that Crime No. 34 of 1996 of Chittamur Police Station was registered on the complaint given by the group of deceased Mudi Parandhami Reddy against accused No. 1 and others. He failed to produce any documentary evidence before the Court to prove that the solvency certificates issued on 25-11-1996 were handed over to him by accused No. 1 to file the same in the Judicial First Class Magistrate's Court, Kota on the same day i.e., on 25-11-1996. His evidence that he cannot identify the sureties brought by accused No. 1 since no sureties attended his office on 25-11-1996. The evidence of D.W.4 clearly shows that accused No. 1 met him at Mettu village at 10 a.m., on the date of offence, thereafter they went to the V.A.O along with D.W.3. From there they went to Kota to the house of D.W.5. Therefore, the evidence of D.W.5 that accused 1 and 2 came to his office along with the sureties between 8.45 a.m., and 9 a.m., on 25-11-1996 cannot be believed.

44. The evidence of D. Ws.3 to 6 is not consistent and not convincing in all material particulars and not reliable with regard to the plea of alibi pleaded by accused 1 and 2. The learned trial Judge has rightly disbelieved the plea of alibi pleaded by accused 1 and 2.

45. According to the prosecution, all the accused i.e., accused 1 to 20 formed themselves into an unlawful assembly with common object of murdering the deceased and in pursuance of their common object, all the accused went in a tractor armed with deadly weapons like battle-axes, spears, knives and sticks to the land of P.W.3 through sugar cane crop, surrounded the deceased and attacked him with the deadly weapons and that the incident was witnessed by P.Ws. 1 to 7 and others. Out of the eyewitnesses examined by the prosecution, P.Ws. 1 and 2 who worked as coolies on the date of incident for ploughing the land in dispute, did not support the prosecution case and they turned hostile to the prosecution. However, the other eyewitnesses P. Ws.3 to 7 supported the prosecution case.

46. The learned Public Prosecutor submitted that though some eyewitnesses did not support the prosecution case, the other independent witnesses examined by the prosecution supported the case, therefore their evidence cannot be rejected. He further submitted that non-examination of the other eyewitnesses is not fatal to the prosecution case.

47. In support of his contention, the learned Public Prosecutor placed reliance on a judgment in State of U.P. Vs. Anil Singh, In the above case, while dealing with an appeal against acquittal the Hon"ble Supreme Court observed as follows:

In an appeal against acquittal the Supreme Court observed that 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.

48. Sri N.V. Raghava Reddy, learned Counsel appearing for the Petitioner in the criminal revision case which is also filed against the order of acquittal, submitted that though the prosecution failed to examine L. Ws.2 and 3, P. Rajagopala Reddy and P. Karunakara Reddy, respectively, who are the main witnesses in this case and though P.Ws. 1 and 2 turned hostile to the prosecution, the evidence of the other independent witnesses being consistent and corroborative with the medical evidence, the findings of the trial Court are unreasonable and that the accused are liable for punishment in view of the evidence of P. Ws.3 to 7, who are the direct eyewitnesses to the incident. Further, there is no delay in lodging the F.I.R. The evidence of P. Ws.3 to 7 clearly shows the motive and intention of the accused to kill the deceased and they have also stated about the manner of attack on the deceased. P.W.3, who is the injured eyewitness and lodged

complaint to the Police, his evidence is corroborated by the medical evidence.

49. In support of his contention, the learned Counsel for the Petitioner, placed reliance on a judgment in State of Punjab Vs. Karnail Singh, In this case also, an appeal against acquittal by the High Court and restoring the conviction of the trial Court, the Hon"ble Supreme 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 reappraise 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.

50. The learned Counsel for the accused contended that P.Ws. 1 to 7 were presented as eyewitnesses. In Ex.D-6 dying declaration, L.W.2 P. Rajagopala Reddy has stated about the presence of his elder brother and his son i.e., accused 19 and 20 and he has not stated the names of any accused in the dying declaration. There was delay of 7 hours in lodging the report though Vakadu is only 15 kms., distance from the scene of offence. He further submitted that P.W.6, who is the other co-brother of the deceased, did not inform about the offence. Only P.W.3 and others shifted the injured to the hospital but not P.W.6. The Police recorded the statement of P.W.1, 7 hours after the incident. The names of P.Ws. 1, 2, 4 and 5 are not mentioned in the F.I.R., even after 7 hours. He further submitted that according to the medical evidence, the wounds have been caused with a blunt object and if there was common object of attacking the deceased why should they attack with butt end of the axe. Therefore, from the evidence of the witnesses and the medical evidence, it is highly improbable. It is further submitted that the version given by L.W.2 Rajagopala Reddy in Ex.D-6 is entirely different with the statement of the other witnesses and is totally different with Ex.P-3 statement of P.W.3, wherein in Ex.P-3 statement the names of accused 1 to 4 were only mentioned. But in the evidence P.W.3 has given inconsistent versions about the attack. The learned Counsel for the accused further contended that the names of accused 1 to 12 are not mentioned in Ex.D-6 dying declaration and the prosecution deliberately not examined L.W.2 Rajagopala Reddy.

51. It is further submitted that P.W.3 and L. Ws.2 and 3 Rajagopala Reddy and Karunakara Reddy received only simple injuries, that L.W.2 did not give any

dying declaration but he stated that he received simple injuries and P.W.3 and others took L.W.2 to the hospital and nobody bothered to inform about the death of the deceased. The learned Counsel for the accused further submitted that no one has seen whether the accused caused injury with the sharp edged weapon or blunt edged weapon and their evidence is not corroborated with the medical evidence.

52. In support of his contention, the learned Counsel for the accused placed reliance on a judgment in Hallu and Others Vs. State of Madhya Pradesh, In the said judgment, the Hon''ble Supreme Court held as follows:

Normally when a witness says that an axe or a spear is used there is no warrant for supposing that what the witness means is that the blunt side of the weapon was used. If that be the implication it is the duty of the prosecution to obtain a clarification from the witness as to whether a sharp-edged or a piercing instrument was used as a blunt weapon.

53. The learned Counsel for the accused further relied on a judgment in Bhola Singh Vs. State of Punjab, The Hon''ble Supreme Court while dealing with credibility of the evidence of the eyewitnesses observed as follows:

Allegations against the accused of being armed with sharp weapons like Gandasa and Ghop as post-mortem report showing that assault was made from blunt side of weapon. It is unlikely that person armed with sharp edged weapon would only use its blunt side. Omission on the part of eye-witnesses in mentioning nature of weapon used. Their version that accused had used blunt side of weapon was set out to fit in with post-mortem report makes their presence on scene of occurrence doubtful and in the circumstances, the accused liable to be acquitted.

54. Relying on the above two decisions, the learned Counsel for the accused submitted that none of the witnesses examined by the prosecution could able to say that which part of the weapon was used for the commission of the offence and their evidence is not supported by the post-mortem report. Therefore, the accused are entitled for acquittal. It is further submitted that the presence of P. Ws.4 to 7 at the scene of offence is also doubtful and their evidence is liable to be rejected.

55. The learned Sessions Judge at paragraph 99 of the judgment observed that the prosecution case was not clear from the beginning at the foundation level i.e., Ex.P-3 statement given by P.W.3. There was delay in lodging the F.I.R though the incident took place at 10 a.m., none of the witnesses gave report to the Police. Moreover, the statement of the injured was recorded at Gudur though several witnesses witnessed the incident, according to the prosecution. It was further observed that the presence of P. Ws.4 and 5 was not mentioned in the report and there are several discrepancies in their evidence. P.W.3 who is the prime witness denied most of the contents of Ex.P-1 report. The driver or owner of the tractor were not examined or not cited as witnesses. On the above grounds, the learned Sessions Judge acquitted all the charges of the charges

with which they were charged.

56. According to the prosecution, the village Mettu in Nellore district is a faction village. The deceased Mudi Parandhami Reddy is a leader of one group and the father of accused No. 1 Putchalapalli Parandhami Reddy was the leader for another group. Both the groups were supporting two separate political parties. A case in Crime No. 20 of 1992 was registered u/s 302 of IPC and subsequently the case referred as "un-detectable" in the year 1996. Accused No. 1, son of Putchalapalli Parandhami Reddy, suspected that the deceased Mudi Parandhami Reddy was responsible for the murder of his father and was waiting for an opportunity to kill the deceased. After the murder of Putchalapalli Parandhami Reddy, father of accused No. 1, there was a police picket up to the year 1996. Though the deceased Mudi Parandhami Reddy was in no way connected with the land dispute between P.W.3 and L.W.2 Rajagopala Reddy on one side and their elder brother accused No. 19 on the other, at the request of P.W.3 and his brother Rajagopala Reddy L.W.2 the deceased agreed to settle the dispute between the brothers. Accordingly, on the request of P.W.3 and his brother Rajagopala Reddy L.W.2 the deceased went to the disputed land situated at Thimmareddyvagu and when accused 19 and 20 have raised an objection for ploughing the land, the deceased pacified them and warned accused 19 and 20. Therefore, on 25-11-1996 accused 19 and 20 collected accused 1 to 8, all of them formed into an unlawful assembly and went to the disputed fields and the coolies P.Ws. 1, 2, 4 and 5 were ploughing the land and when the deceased was sitting on a ridge, all the accused surrounded the deceased and attacked him with battle-axes, knives, sticks and iron rods, due to which the deceased died on the spot. When P.W.3 and L.W.2 Rajagopala Reddy intervened they were also beaten. It seems immediately after the incident the eyewitnesses did not choose to give complaint. Immediately P. Ws.3 and 6 and one D. Subrahmanyam Reddy took the injured Rajagopala Reddy L.W.2 to Vakadu and from there he was shifted to the Government Hospital at Gudur and on the advice of the Medical Officer he was again shifted to Ruya Hospsital, Tirupati. The statement of P.W.3 was recorded by the Inspector of Police, Gudur on the basis of which, a case in Crime No. 175 of 1996 was registered. It is therefore clear that up to 4 p.m., till P.W.3 gave statement to the Inspector of Police at the Government Hospital, Gudur, none of the eyewitnesses examined by the prosecution gave report to the Police about the death of the deceased at Thimmareddyvagu of Mettu village.

57. Ex.D-6 is the dying declaration of Rajagopala Reddy L.W.2 recorded by D.W.1 Judicial Magistrate of I Class, Tirupati on 26-11-1996 i.e., on the next day of the incident between 1.15 p.m., and 2 p.m.

58. The evidence of P.W.14 the then Inspector of Police, who recorded the statement of P.W.3, shows that on 25-11-1996 at 3.15 p.m., while he was at Gudur Circle Office, he received information about an intimation from the Head Constable of Gudur I Town Police Station. Meanwhile also he received instructions from the then Sub Divisional Police Officer, Gudur to visit the Government

Hospital, Gudur and record the statement of injured person. Immediately he visited the Government Hospital, Gudur and recorded the statement of P.W.3 in the presence of the duty medical officer and got it certified that the injured person P.W.3 was conscious at the time of recording Ex.P-3 statement of P.W.3. Immediately he returned to Gudur I Town Police Station, registered the intimation together with Ex.P-3 statement as a case in Crime No. 175 of 1996 and sent the express FIRs to all concerned.

59. Ex.P-3 statement reads as follows:

I belong to Thimmareddyvagu of Chittamuru Mandalam. Agriculture is my livelihood. From the beginning we i.e., our brothers have been in Congress Party and supporting Panchami Reddy. After the death of Putchalapalli Parandhami Reddy in Mettu village, his son namely Putchalapalli Naresh Reddy stood as leader. Since long back, there were severe disputes in between both the parties. Riotings and murders were taken place. There are police cases. There too security proceedings in existence. Recently, Naresh Reddy used to proclaim, here and there, that Parandhami Reddy will be left alive, as long as he is alive. There are 30 acres of land for us in our village. Myself and my elder brother Rajagopala Reddy are in joint. In the year 1992, we the brothers partitioned. For some extent of land, there arose disputes in between my brother Rajagopal Reddy and our elder brother Venu Reddy. On inviting number of times Parandhami Reddy for mediation into our disputes, having had no time for him and having told that he would come today morning, myself, my brother Rajagopal Reddy, my son Karunakara Reddy have been ploughing the land since 07-00 Hours. At about 8-30 Hrs. Mudi Parandhami Reddy and veluru Gopal Reddy together came to us. They sat on the ridge of the land. Myself and my brother Rajagopal Reddy stopped the ploughing, came sitting at Parandhami Reddy and Gopal Reddy and we all were talking. At about 19 or 10-30 Hrs., about 20 persons holding knives, axes and some holding with spears came in a tractor, got down in front of the house of our brother Venu Reddy and came behind sugar cane garden and came to us crying as kill that my son, Putchalapally Naresh Reddy beat on the head of Parandhama Reddy with battle axe, for which, he fell down saying "Amma" and that Konduru Naguru Reddy, Konduru Dayakara Reddy, Konduru Ramachandra Reddy, Putchalapalli Rammohan Reddy, Putchalapalli Srinivasulu Reddy alias Guddi Seenadu, Putchalapalli Niranjan Reddy, Aavula Sudhakar, Putchalapalli Subrahmanyam Reddy, Yellasiri Mastan, Kalatthuru Sudhakar Reddy, Chennur Venkatramana Reddy and eight others, all belonging Mettu village, pierced Paranchami Reddy with spears, knives (chillakatthulu), battle axes. When myself, my brother Rajagopala Reddy and Veluru Gopal Reddy went to the rescue, Gopala Reddy was pushed away and Konduru Naguru Reddy beat me on the back of my head with blunt portion of the knife. Dayakara Reddy beat with the blunt portion of axe on my right hand. All the accused hacked with my elder brother Rajagopala Reddy with axes, spears, chillakatthulu (knives) saying "you too should die". They all fled away saying "come on" my sons died." Myself, Gopal Reddy, Devareddy Subrahmanyam Reddy together carried my elder brother in a

tractor to the Government Hospital, Vakadu and as the doctor therein was not available, he was brought to the Government Hospital, Gudur. Readover to me and found correct.

60. Thus, in the statement Ex.P-3, P.W.3 has stated about the disputes between himself and his elder brother and also requesting the deceased for mediation and when the deceased came to the fields at about 8.30 a.m., and was sitting on a ridge and all of them were talking, at about 10 or 10.30 a.m., 20 persons holding knives, axes, spears and battle-axes came in a tractor from behind the sugar cane garden and crying as that "kill that my son". Accused No. 1 beat on the head of the deceased with a battle axe, due to which he fell down saying "Amma". He also stated that accused 1 to 12 also attacked the deceased with spears, knives, chillakathulu and battle axes and himself and his brother Rajagopala Reddy L.W.2 and P.W.6 went to the rescue, Gopal Reddy was pushed aside. He further stated that accused No. 2 beat him on the back of his head with blunt portion of the knife. He further stated that all the accused hacked his elder brother Rajagopal Reddy L.W.2 with axes, spears and chillakathulu (knives) saying "you too should die". He further stated that himself, P.W.6 and Subrahmanyam Reddy together carried the elder brother i.e., Rajagopala Reddy L.W.2 in a tractor to the Government Hospital, Vakadu and from there he was taken to the Government Hospital, Gudur. Thus, he has not stated engaging P.Ws. 1, 2, 4 and 5 as coolies in Ex.P-3 for ploughing the land and their presence at the time of incident. But, he has clearly stated that P.W.6 Gopal Reddy also came along with the deceased at about 8.30 a.m., and they all sat on a ridge of the land at the time of incident.

61. P.W.13 the Medical Officer attached to the Government Hospital, Gudur has stated in his evidence that on 25-11-1996 at about 3.30 p.m., he examined 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.

62. In Ex.P-3 statement P.W.3 has clearly stated that accused No. 2 beat him on the back of his head with blunt portion of the knife. In the evidence also P.W.3 has stated that accused No. 2 beat him with reverse side butt end of a chillakathi on the back of his head resulting bleeding injury. When he folded both his hands to accused No. 3, he beat him on the left forearm resulting bleeding injury. Both the injuries received by P.W.3 are found by the Medical Officer P.W.13, who has clearly stated that the injuries could have been caused by blunt object like back portion of chillakathi or a stick.

63. Therefore, the presence of P.W.3 on whose request the deceased came to the fields to settle the matter and P.W.3 receiving injuries at the hands of accused 2 and 3 clearly proves the fact that the presence of P.W.3 at the scene of offence at the time of incident. P.W.3 who witnessed the accused attacking the deceased

has clearly stated in his evidence that on 24-11-1996 himself and his brother Rajagopala Reddy L.W.2 went to Mettu village to the house of the deceased and requested the deceased to mediate the land dispute between them and accused No. 19, another brother and when the deceased promised to settle the dispute, he went to Harijanawada and engaged P.Ws. 1, 2, 4 and 5 to attend the agricultural work to plough the land and on 25-11-1996 at about 7 a.m., himself, his brother Rajagopala Reddy L.W.2, his son Karunakara Reddy, his paternal uncle Narayana Reddy and one Bangaraiah went to their fields with coolies P.Ws. 1, 2, 4 and 5 for ploughing purpose and when P.Ws. 1, 2, 4 and 5 were ploughing the land the deceased, P. Ws.6 and 7 and one Mohan L.W.11 came together and when the deceased was sitting on the ridge and they were talking with each other, accused his elder brother accused No. 19 and his son accused No. 20 came to the lands and asked them to stop ploughing the land and raised objection. The coolies stopped ploughing the land. Meanwhile the deceased being elder intervened and told them that the disputes will be settled later and asked the coolies to plough the land. On that accused 19 and 20 left the fields. The coolies ploughed the land as usual and they were again talking with each other. At about 10 a.m., all the accused came there armed with deadly weapons from sugar cane garden side i.e., from northern side. Accused No. 1 who was armed with a battle-axe raised cries as "champankira". By saying so accused No. 1 hacked the deceased on his head with the battle-axe, as a result of which the deceased fell down on the ground with bleeding injury. When he intervened, accused No. 2 who was armed with chilakathi beat him with reverse side butt end of the chilakathi on the back side of his head resulting a bleeding injury. Accused No. 3 who was armed with an axe gave a blow on the head of the deceased, resulting bleeding injuries. Immediately he (P.W.3) folded his both hands to accused No. 3. On that with the reverse of that axe he beat him on his left fore hand, resulting a bleeding injury. Accused No. 4 stabbed the deceased with a bitchuva on the left side of the chest and underneath the left arm-pit. Accused No. 5 stabbed the deceased with a bitchuva on the left side of chest and underneath the left arm-pit. Accused No. 6 stabbed the deceased with a spear on the left side back portion. Accused No. 7 stabbed the deceased with a spear on the left side back portion. Accused No. 8 stabbed the deceased with a chilakathi on the left ear and on the abdomen of the deceased. Accused No. 9 stabbed the deceased with a spear on the left side chest portion and also on amlicus. Accused No. 10 beat the deceased with a stick on his left tempo resulting contusion, due to which blood oozed out from the left ear of the deceased. Accused No. 11 stabbed the deceased with a chilakathi on the left side tempo near the left ear and also on the abdomen of the deceased. Accused No. 12 hacked the head of the deceased with a battle-axe. Then Rajagopal Reddy L.W.2 folded both hands as to why they are beating Parandhami Reddy who already died. Accused No. 2 then hacked Rajagopal Reddy with a battle-axe on his head, resulting a bleeding injury. On that, Rajagopal Reddy fell unconscious. Then P.W.6 came to their rescue but the accused pushed him aside. The other accused also beat the deceased indiscriminately with sticks and iron rods. The deceased died on the spot.

64. The evidence of P.W.6 whose presence is spoken to by P.W.3 in the evidence as well as in Ex.P-3 complaint given to the Police immediately after the incident, shows that one day prior to the death of the deceased, he was present at the house of the deceased along with Chenchaiyah L.W.10 and Mohan. At that time, P.W.3 and Rajagopal Reddy L.W.2 came to the house of the deceased and informed him that there was a dispute among the brothers and requested the deceased to mediate the dispute. On that, the accused told them that he will come on the next day morning to mediate the dispute. On the next day morning at about 7.30 or 8 a.m., himself, Chenchaiyah L.W.10, Mohan and the deceased went to Thimareddyvagu. Then, P.Ws. 1, 2, 4 and 5 were ploughing the land with nagallu. The deceased was sitting on the northern side of the ridge. Himself, Chenchaiyah 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. Meanwhile the deceased intervened and informed that the disputes will be settled later and asked them to plough the land. On that, accused 19 and 20 left the fields. On the same day at about 10 a.m., accused No. 1 came to the scene and hacked the deceased with a battle-axe on the head. After that, accused No. 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. Accused No. 5 stabbed the deceased on the chest. Accused No. 6 stabbed the deceased with a spear on the left side back portion. Accused No. 7 stabbed the deceased on the back side. Accused No. 8 stabbed the deceased on the left ear and also on the abdomen. Accused No. 9 stabbed the deceased on the left side chest portion. Accused No. 10 beat the deceased with a stick on the left temple. Accused No. 11 stabbed the deceased with a chilakathi on the left side of the chest and on the left tempo. Accused No. 12 beat the deceased with an axe on the head. When Rajagopal Reddy L.W.2 intervened, accused No. 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. Himself, 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. P.W.6 in his evidence has stated that P.W.6 also followed him and the deceased to the disputed land at Thimmareddyvagu of Mettu village.

65. P.W.7 also stated in his evidence that one day prior to the incident at 4 p.m., when himself, Mohan L.W.11 and P.W.6 were present at the house of deceased, P.W.3 and Rajagopal Reddy L.W.2 came to his house and they requested the deceased to settle the land dispute among brothers. The deceased told them that he would come to Thimmareddyvagu in the next day morning to settle the

dispute among the brothers. On the next day morning at about 8 a.m., himself, P.W.6, deceased and Mohan L.W.11 reached the fields of Thimmareddyvagu i.e., the lands of Rajagopal Reddy L.W.2 and P.W.3. Then P.Ws. 1, 2, 4 and 5 were ploughing the land with nagallu at that time. One N. Bangaraiah L.W.8 and Karunakara Reddy L.W.3 were gathering waste gross in the land. P.W.3 and Rajagopal Reddy L.W.2 were also ploughing the land. Himself and the deceased sat on a ridge. Meanwhile, P.W.3 and Rajagopal Reddy L.W.2 came there. Then all the accused were found formed into an unlawful assembly armed with chilakathies, spears, sticks and rods and axes and came to the field from northern side of sugar cane crop. Accused No. 1 raised cries saying "champandira". By saying accused No. 1 axed the deceased with a battle-axe on the head, due to which the deceased turned towards the right side. When P.W.3 intervened accused No. 3 beat him with butt portion of the said axe on the left hand. Accused No. 4 stabbed the deceased with a bitchuva on the left side of chest and underneath the left armpit. Accused No. 5 also stabbed the deceased with a bitchuva on the left side of the chest and also underneath the left armpit. Accused No. 6 stabbed the deceased with a spear on the left side back portion. Accused No. 7 stabbed the deceased with a spear on the left side of back portion. Accused No. 8 stabbed the deceased with a chilakathi on the left ear and also abdomen. Accused No. 9 stabbed the deceased with a spear on the left side chest and also on umbilicus. Accused No. 10 beat the deceased with a stick on the left temple. Accused No. 11 stabbed the deceased with a chilakathi on the left side of chest and on the left temple. Accused No. 12 hacked the deceased with a battle-axe on the chest. When Rajagopala Reddy L.W.2 intervened, accused No. 12 hacked him with the same battle-axe on the head, due to which he fell down on the ground. He also stated that when P.W.6 intervened, the accused pushed him aside. He further stated that the deceased died on the spot. Then he left the scene and reached Mettu village at 11 a.m., and informed the incident to P.W.8, wife of the deceased.

66. P.W.8 also stated about P.W.7 informing her about the incident. Immediately she rushed to the place and found the dead body of the deceased. Therefore, P.Ws.3 and 6 also stated about the presence of P.W.7 at the time of offence.

67. P.Ws.4 and 5, who were engaged by P.W.3 and Rajagopala Reddy L.W.2 and who were ploughing the land, also supported the prosecution case and they have also clearly stated about the presence and participation of accused 1 to 12 in the crime and also their individual overt acts.

68. Unfortunately, in this case the dying declaration recorded by the Judicial Magistrate of I Class, Tirupati was marked as Ex.D-1 on behalf of the accused and that the learned Magistrate was examined the defense as D.W.1. According to D.W.1, he recorded the dying declaration of Rajagopala Reddy L.W.2 at the Government Hospital, Tirupati on 26-11-1996 i.e., between 1.15 p.m., and 2 p.m., i.e., one day after the incident.

69. According to P.W.13, Rajagopala Reddy L.W.2 also received injuries and on

25-11-1996 he examined the said Rajagopala Reddy and found the following injuries:

- (1) A lacerated injury bone deep of about 2 1/2" x 1/4" over the middle of head. Blood stains present. Bleeding present.
- (2) A lacerated injury bone deep of about 3" x 1/4" over right parietal skull. Blood stains present. Bleeding present. Tenderness present.
- (3) Diffused swelling with tenderness over lower 1/3rd of right forearm with tenderness.
- (4) Tenderness over the medial side of right scapula with two skin scratches of about 2" and another of 1" red in colour with swelling over the same area with tenderness.

P.W. 13 was of the opinion that the injuries received by L.W.2 are simple in nature.

70. Since Rajagopala Reddy L.W.2 survived and the Inspector of Police P.W.14 already recorded the statement of P.W.3 at the Government Hospital, Gudur on the date of incident i.e., on 25-11-1996, on the basis of which he registered a case and took up investigation. Therefore, there is no need to give much importance to Ex.D-1 dying declaration recorded by D.W.1. However, in Ex.D-1 dying declaration also it has been mentioned that about 20 persons came and hacked the deceased. It is not known as to why the prosecution did not examine the crucial witness Rajagopala Reddy L.W.2 who also received injuries at the same time at the hands of the accused. However, the eyewitnesses P. Ws.3 to 7 examined by the prosecution supported the prosecution case about the accused attacking the deceased and P.W.3 and Rajagopala Reddy L.W.2. Even if the presence of P. Ws.4 and 5, who are coolies engaged by P.W.3 and his brother Rajagopala Reddy L.W.2 for ploughing the land is doubtful and even if their evidence is brushed aside, there is the evidence of P. Ws.3, 6 and 7, who clearly stated about the matter of attack by the accused 1 to 12 on the deceased and P.W.3 and Rajagopala Reddy L.W.2. Their evidence also amply supported by the medical evidence.

71. When a mob of more than 10 persons suddenly came armed with spears, axes, chillakathulu and other instruments and started attacking the deceased indiscriminately, it is not possible for the witnesses also to see whether the accused are causing the injuries with sharp portion of the weapon or blunt portion of the weapon when they are attacking one by one with deadly weapons. Therefore, the contention of the learned Counsel for the accused that the accused would have caused the injuries with sharp edged portion of the weapon but not with the blunt portions, cannot be accepted.

72. The evidence of the eyewitnesses clearly indicates that the accused 1 to 12 attacked the deceased till his death on the spot itself. It is therefore clear that accused 1 to 12 had common intention to kill the deceased and caused injuries

either with blunt side portion of the weapons or sharp edged portion of the weapons with an intention to kill him. Whether they used sharp edged weapon or blunt portion of the weapon is immaterial in view of the facts and circumstances of the case and also the evidence of the eyewitnesses was amply supported by the medical evidence.

73. Simply because there are discrepancies in the evidence of the witnesses and their statement before the Investigating Officer in the course of investigation, that would not be sufficient to throw out the evidence unless it is shown that the discrepancies go to the very root of the matter. Though there are discrepancies here and there in the evidence of the eyewitnesses, but, in our view, those discrepancies do not go to the root of the matter touching the core of the material aspects in respect of the incident.

74. As seen from the depositions of the eyewitnesses, the witnesses were subjected to lengthy cross-examination but nothing has been elicited in the cross-examination to create any doubt in their veracity.

75. It is settled law that if a witness is found to be reliable and he is believed to be the person during the occurrence, his evidence cannot be rejected on the ground that his name is not being mentioned in the FIR. Non-mention of the name of the witnesses may be an honest omission, inadvertent mistake or may be due to various other conceivable reasons.

76. We have carefully scrutinized the entire evidence of P. Ws.3 to 7 who have given a detailed narration of facts as to how the accused caused injuries to the deceased and P.W.3 and Rajagopala Reddy L.W.2. P.W.3 seems to have stated in the evidence about the presence of P.W.7 at the time of incident, clearly stated that he witnessed the incident and after that he informed the wife of the deceased about the incident and that P.W.8 also clearly stated that she was informed by P.W.7 about the incident and immediately she rushed to the scene of offence. The evidence of P.W.7 is also found to be independent and reliable. Therefore, even if his name is not mentioned in the FIR his evidence can be accepted.

77. Thus the evidence of the eyewitnesses clearly indicates that accused 1 to 12 attacked the deceased, P.W.3 and Rajagopala Reddy L.W.2 and they have not stated about the presence and participation of accused 13 to 20 in the crime. Their names also not find place in Ex.P-3 statement given by P.W.3 immediately after the incident. As per Ex.P-3, only accused 1 to 12 came and formed into an unlawful assembly armed with deadly weapons and attacked the deceased, P.W.3 and Rajagopala Reddy L.W.2. Therefore, accused 1 to 12 are only liable for punishment for causing the death of the deceased and for causing injuries to P.W.3 and Rajagopala Reddy L.W.2.

78(a). Accused 1 to 12 are, therefore, found guilty u/s 235(2) of the Code of Criminal Procedure, for the offences under Sections 147, 148 and 302 read with Section 149 of IPC for causing the death of the deceased Mudi Parandhami Reddy

and accused 2 and 3 are further liable for punishment u/s 324 read with Section 34 of IPC for causing simple injuries to P.W.3. Accused 1 to 12 are therefore sentenced to rigorous imprisonment for a period of one year each for the offences under Sections 147 and 148 of IPC.

(b) Accused 1 to 12 are further sentenced to "imprisonment for life" for the offence u/s 302 read with Section 149 of IPC 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 are further sentenced to undergo rigorous imprisonment for 6 (six) months each for the offence u/s 324 read with Section 34 of IPC.

(d) All the sentences shall run concurrently.

(e) Accused 1 to 12 are entitled to the benefit of "set-off" as per Section 428 of Code of Criminal Procedure

(f) Accused 13 to 20 are found not guilty for the offences with which they were charged and the judgment of the trial Court insofar as acquitting accused 13 to 20 is hereby confirmed.

(g) The trial Court is directed to issue Warrants of Arrest against the accused 1 to 12 to serve the sentences awarded to them.

(h) Both the criminal appeal and the criminal revision case are allowed in part and the impugned judgment of acquittal passed by the trial Court is set aside to the extent indicated above.