

(2015) 09 KAR CK 0063

In the Karnataka High Court

Case No : Criminal Appeal Nos. 2801, 2802 and 2568/2011

State of Karnataka and Others

APPELLANT

Vs

Neelappa and Others

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 357
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 302

Citation : (2015) 09 KAR CK 0063

Hon'ble Judges : Anand Byrareddy and S. Sujatha, JJ.

Bench : Division Bench

Advocate : V.M. Banakar, Additional State Public Prosecutor, for the Appellant;
S.S. Yadrami, Advocate, for the Respondent

Judgement

Anand Byrareddy, J.—These appeals are heard and disposed of by this common judgment.

2. The appeal in CrI. A. No. 2801/2011 is filed by the State questioning the acquittal of accused Nos. 4 and 5, for the offence punishable alleged against them. The appeal in CrI. A. No. 2802/2011 is filed again by the State for enhancement of sentence on the conviction of accused Nos. 1 to 3, for the offence punishable under Section 304(ii) of the Indian Penal Code, 1860 (hereinafter referred to as "I.P.C.", for brevity) and Section 448 of IPC, to contend that the accused ought to have been convicted and sentenced to life imprisonment for an offence punishable under Section 302 of IPC. The appeal in CrI. A. No. 2568/2011 is filed by accused Nos. 1 to 3, for acquittal against the conviction and sentence imposed on them.

3. The facts of the case are said to be as follows:

One Ramappa Kuri is the complainant, who is no more, was suspected of having an illicit relationship with the wife of one Yankappa, accused No. 1, and the village elders are said to have advised the parties about an year prior to the

alleged incident to mend their ways and not to have any bad blood between them. However on 16.8.2008 while the deceased Ramappa Kuri was returning from his land, he has said to have spoken to Yankappa's wife whom he had met on the way. When he was at home at around 8.00 p.m., the accused Nos. 1 to 5 are said to have armed themselves with sickles and sticks and trespassed into the house of the deceased and are said to have attacked him, in the kitchen, where he was along with his wife and his aged mother, was also present and was said to be lying on a cot outside, in the hall. It transpires that the deceased was attacked on his shoulder, his back and he was kicked in his lower abdomen. Hearing the hue and cry raised by the victim and others, the neighbours, including the brother of the deceased and others had come to his rescue and the accused are said to have gone away, threatening the deceased that if he again interfered or tried to contact Yankappa's wife, they would kill him. The complainant was thereafter taken to Tavaregera Government Hospital and on information provided to the Tavaregera Police Station, a case was registered in Crime No. 57/2008 for offences punishable under Sections 143, 147, 148, 323, 324, 428, 504 and 506 read with Section 149 IPC. Subsequently, he was said to have been transferred to the VIMS Hospital, Ballad and it transpires that on 18.8.2008 he had died. The reason for his death was cited as septicemia. On account of his death, the police had filed a charge sheet including the offence punishable under Section 302 read with Section 149 of IPC.

4. It is after further investigation and after further proceedings having been taken, the Magistrate having taken cognizance of the case had committed the case to the Court of Sessions and the Court of Sessions in turn had assigned the matter to the Fast Track Court and thereafter charges having been framed against the accused, they had pleaded not guilty and claimed to be tried.

5. The Court thereafter had recorded the evidence of the prosecution witnesses, PW. 1 to 21 and also marked several exhibits and material objects. Thereafter, having recorded the statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to "Cr.P.C., for brevity), as regards incriminating statements appearing against them, had framed the following points for consideration.

(1) Whether prosecution proves that on 10.8.2008 at about 9.00 p.m. at Ganganala village, near the house of Ramappa S/o. Mariyappa Kuri, the accused formed themselves into an unlawful assembly and they being the members of the said assembly with the common object and intention, illegally trespassed to assault and to cause death of Ramappa Kuri and to give threat to lives of Yamanamma and Hanumamma and thereby they have committed an offence punishable under Section 143 of I.P.C.

(2) Whether prosecution proves that on the aforesaid date, place and time, the accused being the members of the unlawful assembly with common object, accused illegally entered into the house of Ramappa, which is in custody of Ramappa Kuri with an intention to assault him and caused his death and also

gave threat to the lives of his family members of Yamanamma and Hanumamma and thereby they have committed an offence of house trespass punishable under Section 448 R/w. Section 149 of I.P.C.

(3) Whether prosecution proves that on the aforesaid date, place and time, the accused being the members of the unlawful assembly, armed with deadly weapons like sickle and clubs in prosecution of the common object of the said assembly, among them accused No. 1 assaulted to Ramappa to his neck through sickle, accused No. 2 assaulted him to his abdomen and accused No. 3 to 5 assaulted him through hands and they have used deadly weapons of sickle and clubs for assaulting him knowing that it is likely to cause death and thereby they have committed an offence of rioting armed with deadly weapons, punishable under Section 148 of I.P.C.?

(4) Whether prosecution proves that on the aforesaid date, place and time, the accused being the members of the unlawful assembly with common object, have voluntarily caused bodily hurt to Ramappa S/o. Mariyappa Kuri by assaulting have voluntarily caused bodily hurt to Ramappa S/o. Mariyappa Kuri by assaulting him through hands and thereby they have committed an offence of voluntarily causing hurt, punishable under Section 323 R/w. Section 149 of I.P.C.

(5) Whether prosecution proves that on the aforesaid date, place and time, the accused with common object by forming into a unlawful assembly, with an intention to cause death of Ramappa S/o. Mariyappa with deadly weapons and assaulted him through sickle to his neck and club to his abdomen and he died on 18.8.2008 at Bellary VIMS hospital due to grievous injuries sustained through sickle and club and thereby they have committed an offence of murder, punishable under Section 302 R/w. 149 of I.P.C.?

(6) Whether prosecution proves that on the aforesaid date, place and time, the accused being the members of the unlawful assembly with common object, armed with deadly weapons like sickle and clubs, have abused in stiltly words and gave threat to the lives of Yamanamma and Hanumamma and thereby committed an offence of criminal intimidation punishable under Section 506 R/w. 149 of I.P.C.?

(7) What order?

6. The Court had ultimately acquitted accused Nos. 4 and 5 and convicted the accused Nos. 1 to 3 for the offence punishable under Section 304(ii) of IPC and sentenced them to undergo Simple Imprisonment for a period of five years and to pay a fine of Rs. 10,000/- and also to under go Simple Imprisonment for a period of six months and to pay a fine of Rs. 1,000/- for the offence punishable under Section 448 of IPC. In all, the accused were sentenced to pay a fine of Rs. 11,000/- each, of which the fine amount of Rs. 30,000/- was to be paid to the legal representatives of the complainant as compensation under Section 357 of Cr.P.C. It is that, which is under challenge both by the State as well accused Nos. 1 to 3.

7. Insofar as the appeals filed by the State are concerned, the appeal in CrI. A. No. 2801/2011, the only accusation against accused Nos. 4 and 5 was of having accompanied accused Nos. 1 to 3 and having assaulted the deceased with their bare hands. There are no injuries attributed to such assault by the accused. Their very participation is doubtful, in view of the fact that there is only one eye witness to the incident. Though the mother of the deceased was also present at the time of the incident, she was not in the kitchen but outside, in the hall, she was lying on a cot and never got off the cot and therefore, there was no occasion to witness the assault said to have been committed by the accused Nos. 4 and 5. The very allegation against them is of assault with their bare hands leaving no injuries. It is in this background that the Court below has thought it fit to acquit them and it is apparent that they have been roped in, obviously to include all the members of the family in the alleged commission of the offence. Therefore, there is no merit in the appeal and the same stands dismissed.

8. Insofar as the appeal in CrI. A. No. 2802/2011 is concerned, the same would be dependent on whether the appeal filed by the accused would succeed. Only if the appeal filed by the accused is dismissed, then the question of considering the enhancement of sentence arises. If this Court should take the view that the appeal filed by accused Nos. 1 to 3 is tenable and if it is sustainable, then the question of enhancement of sentence would not arise. Accordingly the appeal filed by the accused in CrI. A. No. 2568/2011 is considered at length.

9. The learned counsel for the appellants would contend that the motive alleged in respect of the attack said to have been made by the accused, on the deceased, was that the deceased was having an illicit relationship with the wife of accused No. 1. In this regard it is pointed out that there is no effort by the prosecution to establish the motive. It is only sought to be suggested through the testimony of PW. 1, namely, the wife of the deceased and PW. 12, the mother of the deceased, who are least competent to speak about any such illicit relationship that may have existed between the wife of accused No. 1 and the deceased. There is no other independent witnesses to have spoken about any such relationship having been discovered at an earlier point of time and of the village elders having intervened to bring about peace and the deceased having met the wife of accused No. 1 on his way before the incident, when he was returning from his land and having spoken to the woman. In the absence of any such evidence the motive sought to be alleged by the prosecution is not at all established and without laying the foundation for the accusation made against the accused, the prosecution has not made any head way in establishing the case against the accused, in the absence of a motive.

10. Secondly, it is pointed out that the injuries caused to the accused were 10 in number, of which injury Nos. 1 to 3 and 7 to 10 were shown to be minor injuries, injury No. 4, 5 and 6 were said to be surgical wounds caused while the petitioner was subjected to surgery, on account of fracture of ribs No. 5 to 7 on the left side of the chest. This, according to the learned counsel for the accused, was caused

by the deceased having fallen from a tree. This is evident from the statement of the doctor, who had treated the said deceased, namely, PW. 16, who has stated that the mother of the deceased had informed him that the deceased had suffered injuries to his abdomen on account of fall from a tree and it was of a nature which could not have been caused by clubs or by sickles, which the accused are said to have used in the assault. There is no evidence tendered and no statement made by the witnesses as to how the injuries were caused to the ribs. The statements made by the deceased would only reveal that he was attacked on his back, on his shoulder and neck. He has not spoken about being attacked on his ribs by the accused nor has he made mention about the weapon used. In the absence of which it becomes doubtful as to whether the injuries had been caused in the fashion that was alleged in the complaint and the charge sheet.

11. The learned counsel would also point out that the other injuries are of such a nature which cannot be attributed to having been caused with sickles. In that, they are minor cut injuries which cannot be attributed to the accused and are not consistent with the allegation that the accused had come with a premeditation to commit the murder of the deceased. The injuries were of such a nature that they could not have caused the death of the deceased at all. The death apparently having occurred on account of complications that had developed after a surgery conducted on the deceased, cannot be attributed to the alleged assault by the accused. Further, having regard to the allegation that five of the accused persons had attacked the deceased when he was inside the kitchen of his house is also not readily acceptable. The manner in which all five accused could attack the deceased in the kitchen is practically not explained and it cannot be readily accepted. More particularly, the learned counsel would draw the attention of the Court to the evidence of each of the witnesses.

12. PW. 1 who is the wife of the deceased had in her evidence stated that the incident had taken place in the kitchen, when the deceased was frying eggs and her husband was assaulted by accused No. 1 with a sickle, accused Nos. 2 and 3 with sticks and accused Nos. 4 and 5 with their bare hands. And that he was dragged from the kitchen and thereafter PW. 2 and PW. 3 had rushed to his rescue and it is only then that the accused had left the place. This statement itself is inconsistent with the version of the complaint Ex. P. 12, wherein it is stated by the deceased that he had been assaulted in the kitchen itself and he had not stated that he was dragged out of the kitchen when the PW. 2 and PW. 3 intervened to prevent any further assault. It is therefore contended that this embellishment, which the witness has sought to make to a testimony, which is contrary to the complaint would clearly demonstrate that she was an interested witness who had given contradictory versions, when it is totally contrary to the statement made by the deceased in his complaint. Further, the injuries sustained by the deceased revealed, in the first version before PW. 16, the doctor, who had treated the deceased, that the mother of the deceased had informed the doctor that her son suffered injuries as a result of a fall from a tree which was an

accident and these inconsistencies would certainly demonstrate that the case of the prosecution was foisted on the accused on false accusations.

13. PW. 2 is said to be an eye witness who had turned hostile. He had in his initial statement said to have indicated that on the said date and time there was an oral altercation between the accused and the deceased, and that he had intervened and prevented further assault of the deceased and that the scene had occurred in his front yard. However, he had retracted the statement and did not support the case of the prosecution, while tendering evidence.

14. PW. 3, who was another eye witness had stated that the incident had taken place in the front yard of the house. In her cross examination she had stated, that by the time she came, she saw Ramappa lying on the ground; She did not speak about the injuries. This witness was a relative of the deceased and she was also an accused in a murder case and in a civil dispute the accused No. 1 had deposed against her and therefore, she had every reason to tender such evidence against accused No. 1 out of sheer spite and enmity. It is further pointed out that the version of this witness having seen Ramappa in the front yard, when Ramappa himself had not said that he was dragged to the front yard, cannot be reconciled.

15. PW. 4, Laxmamma was also said to be an eye witness and that she had come to the spot after the incident was over and the deceased had lost his consciousness and claimed that PW. 2 and PW. 3 had come there and intervened preventing any further assault from the accused. PW. 5, the husband of the witness PW. 4, on the other hand had totally contradicted her version that on the date of the incident her husband was away at Sandur and came after eight days. She admitted that there was a dispute and quarrel between her and the accused No. 2 with regard to the grazing of their sheep and therefore, there was enmity between the said accused No. 2 and herself.

16. PW. 5 was the husband of PW. 4 and is claimed to be another eye witness who had stated that he heard the commotion near the house of the deceased and saw the accused assaulting Ramappa, but had contradicted himself in stating that by the time he came out to see what was on, he had noticed Ramappa was already assaulted would contradict the complainant's version that he was attacked inside the house in the kitchen. While PW. 4 and PW. 5 contradict the said statement and claim that he had been dragged out of the house, PW. 2 and PW. 3 intervened to prevent further assault, they have also claimed that they have witnessed the actual overt acts by the accused. In the cross examination of the said witness he had admitted there were two rival groups in the village and that he belonged to Ramappa's group. Therefore it is evident that PW. 4 and PW. 5 have been planted as witnesses to the case of the prosecution and the version of Ramappa of being dragged out of the kitchen into the open is only in order to facilitate the others to be named as eye witnesses. Their testimony however, would indicate serious contradictions in the said witnesses claiming that they did see the actual assault, while at the same time inconsistently stating that by the

time they came out of the house, the assault had already taken place. This itself is sufficient to overthrow the case of the prosecution as being contradictory and inconsistent.

17. PW. 6 was an alleged eye witness who had turned hostile and did not support the case of the prosecution.

18. PW. 7 was another alleged eye witness. Though in his examination-in-chief he had stated that Ramappa was in the front yard of the house, but in cross examination he has stated that by the time he came, Ramappa was lying on the ground and had also admitted that there was enmity between Ramappa and accused regarding a certain open space. The said witness had also stated that certain land was sold by him to a temple, of which accused No. 1 was a managing trustee and this witness had intentionally transferred the land given to the temple in the name of one Manappa and hence, there was enmity between the said witness and the accused.

19. PW. 8 was an inquest panchanama witness, belonging to a different village, but he has stated that he does not know the contents of the panchanama.

20. PW. 9 had turned hostile to the prosecution and her evidence did not support the case of the prosecution.

21. PW. 10 was a panchanama witness to the scene of offence and seizure of the material objects 2 and 3. But he has turned hostile and has not supported the prosecution.

22. PW. 11 was another panchanama witness of the scene of offence and also turned hostile.

23. PW. 12 Hanamamma, was the mother of the deceased and she has only stated that there were blood stains from the kitchen to the front yard, on the floor, at the spot where he was said to have been dragged from the kitchen to the front yard. According to her there should have been drops of blood along the way and though she was the one who accompanied the injured deceased to the hospital, and had also informed the doctor that her son had fallen from a tree, had later changed her version but has admitted that there was a dispute between the two groups namely the accused and the deceased.

24. PW. 13 was the elder brother of the deceased and he has indicated that he was living in a separate house and was also said to be the eye witness and his evidence is not consistent with the complaint or the statement made by the deceased, for the same reasons, as the other witnesses who are said to be the eye witnesses, whose evidence is again contrary to the case of the prosecution.

25. PW. 14 Dr. Ravishankar was the Medical Officer, who had conducted postmortem on the dead body and has indicated that the death was due to septicemia and not on account of any injuries caused by the alleged assault by the accused.

26. PW. 15 was the engineer said to have prepared the sketch of the scene of offence.

27. PW. 16 Dr. Mallikarjun is the Medical Officer, who had given initial treatment to the deceased at Tavaregera Hospital and to whom the mother of the deceased had stated that the deceased had fallen from a tree and suffered the injuries with which he was admitted to the hospital. Pertinently the witness has stated that there was no cut or other lacerated injury, which could be of serious nature and which could have possibly caused the death of the deceased and further he has also admitted that M.O. 1 to 3 which are sickles said to have been used by the accused never been sent for examination by the Forensic Science Laboratory, which did not bring about any co-relation as to the said weapon having been used in the assault by the accused.

28. PW. 17 was a panchanama witness who has also indicated that there were two rival groups, of which, one was of the deceased and the other was of the accused.

29. PW. 18 was a Police Head Constable and official witnesses.

30. Similarly, PW. 19 is the officer who had registered the case and conducted part of the investigation. He has stated about recording the statements of witnesses and has admitted that there were no blood stains at the spot nor has he seized any blood stained clothes.

31. PW. 20 is the Circle Police Inspector who had conducted the investigation as well, and he has also recorded statements of C.W. 2 to C.W. 6 and conducted seizure panchanama of material object No. 1, which again was not found with blood stains. He has not visited the spot and admitted that injuries were bleeding injuries but he has not seized any blood stained objects, thereby belying that there were any such bleeding injuries.

32. PW. 21 is the another Investigating Officer who had participated in the investigation and who had ultimately filed the charge sheet.

33. It is pointed out that from the evidence of these witnesses it cannot be said that the prosecution has brought home the charges against the accused beyond all reasonable doubt. Let alone of offences having been brought under section 304(ii) or 448 of IPC, which the Court has convicted the appellants with. It certainly cannot be said that the accused persons were guilty of offence punishable under Section 302 read with Section 149 of IPC. There is admitted evidence to indicate that the deceased had fallen from a tree or otherwise there is no explanation for the ribs having been fractured when the same is not attributed to any injury caused by any weapons and the ribs having been cracked internally without any outward injury would indicate that he had fallen on his abdomen from a tree, which would clearly explain the nature of injuries and the manner in which it had occurred. The other minor injuries are said to be attributed to an attack by the accused and if indeed they had come armed with

sickles and sticks with a clear intention of committing his murder, the injuries caused would certainly be grievous injuries and would have resulted in much damage. Whereas, there were no bleeding injuries that were found on the body of the deceased. The ultimate death could only be attributed to complications having developed after the surgery he underwent for the fracture of ribs and other internal injuries in his abdomen.

34. The only witnesses who are said to be projected are PW. 1 the wife of the deceased, PW. 12 and PW. 13 the mother and elder brother of the deceased, respectively, who have again contradicted the very statements made by the complainant as to the manner in which the incident had occurred and they have also admitted that there was enmity between two groups consisting of and including the deceased in one group and the accused on the other hand belonging to another group. Further, in the evidence of PW. 19 the Investigating Officer had said that the injured was not in a position to speak properly and that names of the accused been added at the instance of persons who had accompanied the deceased to the hospital and therefore Ex. P. 12 the complaint is an improved version of the alleged complainant and could not be the original complaint lodged by the deceased.

35. On the date of incident, it is contended that there was palanquin-seva at the temple and many people had gathered at the scene. It was quite possible that several independent witnesses being examined if Ramappa, the deceased was dragged into the front yard of his house and when other members of the public could also have seen the incident as claimed by the several witnesses. Therefore, in the absence of examination of any independent witnesses it was clearly an attempt on the part of the prosecution to frame the accused on the basis of such interested testimony of interested witnesses.

36. One another curiosity is that though there is no material produced, on the other hand, the police categorically have stated that there were no blood stains found initially near the scene of crime. PW. 12 has spoken about blood stains in the kitchen and the front yard of the house of the deceased. This is again an indication of a false case being foisted against the accused. Further, the glaring circumstance of PW 4 having stated that her husband was not in town on the date and time of the incident is belied by the fact that it is PW. 5 the husband of PW. 4 is cited as an eye witness and this would indicate the falsehood of the case of the prosecution and he himself has stated that he had seen the incident. This would lead to a serious situation where his statement is not supported by his own wife that he was not at the place of the incident when she has stated that he was not even in town and he had gone to Sandur.

37. It is also strange that the police have not thought it fit to send any of the material objects for inspection by the Forensic Science Laboratory, specially the sickles with stains of blood. It was significant to have produced evidence to show that the blood was possibly that of the deceased in order to relate the use of the said weapons by the accused in the commission of the offence. Therefore when

the very incident having taken place is doubtful, the Court below proceeding on the basis that the prosecution has not established the case of commission of murder, but having known that at best the accused may have caused minor injuries, which had ultimately resulted in the death of the deceased, but which they did not intend and having chosen to convict the accused for an offence punishable under Section 304(ii) IPC is totally erroneous and it leads to a miscarriage of justice which cannot be said that any such charge could be sustained at all. When the evidence tendered by the prosecution is for one of murder, the Court below having chosen to impose any such sentence on the basis that the accused were indeed found to have participated in the incident and have caused the injuries is without any basis and seeks acquittal of the accused.

38. The learned Additional State Public Prosecutor, on the other hand, would submit that the prosecution is being unfairly accused of foisting a false case against the accused only on the footing that PW. 1, PW. 12 and PW. 13 were said to be the wife, mother and brother of the deceased. Since the incident had taken place in the house of the deceased and the witnesses who were at the place of occurrence being eye witnesses cannot be characterized as being an attempt to foist a false case against the accused. Since they were the only persons present at the spot, the prosecution had examined them and the festival occasion in the village and that there were other people who could have tendered independent evidence is not for the accused to suggest. If there were any such witnesses, the prosecution would have certainly examined those witnesses. The examination of other witnesses such as PW. 4 and PW. 5 was sufficient to bring home the charges that the accused had attacked the deceased in the kitchen and ultimately dragged him in the open and on the intervention of PW. 2 and PW. 3, the accused having left the place cannot be doubted and therefore the claim that the prosecution has brought a false case is not a fair submission.

39. He would further submit that insofar as the motive is concerned, it is alleged that there is no evidence of such motive. The witnesses have spoken about the enmity not only on account of the dispute as regards an open space, between the two groups, there was lurking suspicion of accused No. 1 of the deceased having illicit relationship with his wife and this was not a new development, but was present much before the incident and was an added circumstance which provided the motive for the accused to attack the deceased with premeditation with deadly weapons as claimed. That there were no grievous injuries caused by the attack is again not wholly correct. The fracture of the ribs and other internal injuries were sufficiently serious requiring surgery being performed on the deceased and ultimately the deceased having succumbed on account of those injuries notwithstanding, that there were other medical complications, would still establish that it was the accused who were the cause for his death and therefore, the remoteness sought to be claimed in the death of deceased having died ultimately of septicemia cannot be divorced from the fact that it is on account of the initial attack that the deceased suffered death and therefore there is certainly a causal connection between the attack and the ultimate death.

40. Insofar as the contention that the injuries suffered by the deceased may have been caused by the accused is far from the truth and not on account of the assault is sought to be projected by reference to statement of medical practitioner PW. 16 who has indicated that PW. 12 the mother of the deceased had informed him in the first instance immediately on the date of incident when he was admitted to Tavaragera Hospital that mother of the deceased PW. 12 had stated that the deceased had fallen from a tree and suffered injuries. Whereas, there are other witnesses who have spoken about actual assault and the injuries suffered by the deceased. The court below in its discretion having sifted this evidence has accepted the case of the prosecution that the deceased was in fact attacked by the accused. It was on account of these injuries, he had died. This discretion was available to the Court below in addressing the evidence tendered and any inconsistency thereto cannot be said to be fatal to the case of the prosecution when there was ample evidence to support the charges brought against the accused.

41. The learned Additional State Public Prosecutor would further point out that it was the cumulative effect of the injuries and the ultimate complications that developed, which resulted in the death of the deceased and therefore the Court below was not justified in diluting the case of the prosecution in convicting and sentencing the accused for an offence punishable under Section 304(ii) and 448 of IPC when it ought to have convicted and sentenced the accused for the offence punishable under Section 302 read with Section 149 of IPC and therefore seeks that the appeal of the accused be dismissed and the appeal seeking enhancement of punishment to accused Nos. 1 to 3 be allowed in terms.

42. Given the above rival contentions the preliminary requirement of the prosecution to establish its case was to establish the motive behind which the accused had attacked the deceased. There is no evidence on record to indicate that there was an illicit affair between the deceased and the wife of accused No. 1. No witness has been examined who could say about any such relationship existing. Therefore, the alternative claim that there was a land dispute between two groups consisting of the deceased on the one hand and the accused on the other is not again projected by examining any witnesses or in furnishing details of the land in question in respect of which there was any such dispute. Hence it can safely be said that the prosecution has failed to establish the motive behind the alleged assault and murder.

43. Insofar as the version of the witnesses that is the so called eye witnesses is concerned are totally inconsistent with the statement of the complainant, deceased himself. In that, he has categorically stated that he was attacked in the kitchen when he was frying eggs, by accused Nos. 1 to 5. The size of the kitchen as shown in the sketch at Exhibit P. 8, it is shown as 10" x 15". If five accused wielding sticks and sickles barged into a room measuring 10" x 15" and mill about attacking one person, it is difficult to conceive all five attacking the deceased at the same time. The law of physics will not permit this kind of attack

in a confined space. Persons wielding sticks would not be able to use any force in attacking the deceased with sticks without getting in each others way. In any event, the injuries that are found on the deceased were all minor injuries, in that, injury Nos. 1 to 3 and 7 to 10 were shown to be minor injuries. Injury Nos. 4 to 6, on the other hand, were shown as surgical injuries obviously suffered by the deceased when he was under surgery and it has ultimately resulted in the Septicemia, causing the ultimate death of the deceased. Therefore, it can be said that whether the injuries were caused in an attack on the deceased inside the kitchen becomes doubtful.

44. Further, the statement of the deceased as to the several injuries being caused by the several accused persons with the weapons such as, sickles and sticks is silent about the manner in which his ribs Nos. 5 to 7 on the left side had been fractured. He has not attributed attack by any one of the accused with any weapon insofar as to cause the fracture of his ribs was concerned. This is significant. It was not indicated as to how he had suffered the injuries to his ribs. The medical evidence would indicate that he had fallen against some round object measuring about 12 centimeters in diameter and therefore, it is a mystery as to how he had suffered those injuries, unless he had fallen from a tree, in which event, it was possible that if he had fallen on his ribs, the ribs would have been fractured. In the absence of any statement as to which of the accused had caused those injuries, it does appear that the true sequence of events and facts have not been brought on record. Therefore, there is serious doubt about the manner in which the incident had occurred.

45. More significantly, the deceased had in his statement stated that he had been attacked in the kitchen. Thereafter, the accused had left with a warning that if he had anything to do with accused No. 1, he would be killed. But however, the other so called eye-witnesses have inconsistently stated that the deceased had been dragged out of the kitchen into the front yard of the house of the deceased. It is only on hearing the commotion that those eye witnesses had come upon the scene and by which time the assault had already taken place. At the same time, the inconsistency raised in their earlier statement that they did observe the overt acts committed by the accused. This is again an inconsistency, which points to the witnesses being false witnesses, who have been tutored to merely bolster the case of the prosecution. For only if they could state that the deceased had been dragged from the kitchen to the front yard, they could speak as eye witnesses of the said incident for otherwise, if he was attacked inside the kitchen and if the accused had left, there was no possibility of those witnesses acting as eye witnesses. Therefore, this was the supposed ingenuity of the prosecution in seeking to bring these witnesses as eye witnesses. On the other hand, it has weakened the case of the prosecution. The version does not hold water and is inconsistent with the statement of the deceased himself.

46. The further glaring circumstance that the claim by PW. 12 that there were bleeding injuries suffered by the deceased is not borne out by any material on

record. There were no blood-stained weapons or blood stained clothes and there was no sign of blood stains at the spot and no such evidence was tendered before the court. It is obvious that the injuries suffered were minor in nature. There is no evidence or explanation as to how the deceased had suffered fracture of his ribs. He has not in his statement stated as to which of the accused caused those injuries and how and therefore, it becomes a mystery as to how he had suffered the fracture of his ribs. Therefore, though a large number of witnesses have been examined, they have hardly supported the case of the prosecution and the inconsistencies in their testimony is writ large. For instance, PW. 4 and PW. 5, who are said to be eye witnesses have contradicted each other. PW. 4 is the wife of PW. 5. PW. 4 has stated that her husband was not in town on the date of the incident. PW. 5 on the other hand, who appears to be an eye witness states to the contrary that he had witnessed the scene of attack on the deceased and at the same time having changed their version to say that by the time they came to the scene, the assault had already taken place and the victim was lying on the floor and he was not conscious. These contradictions would not make out a water-tight case for the prosecution and it cannot be said that a case has been made out beyond all reasonable doubt.

47. Consequently, the appeal in Criminal Appeal No. 2568/2011 is allowed. The judgment of the court below is set aside insofar as the conviction of accused Nos. 1 to 3 is concerned. They shall be set at liberty. The fine amount, if any, paid shall be refunded to them. The bail bonds, if any, furnished by the accused, shall stand cancelled.

48. The appeal against accused Nos. 1 to 3 having been allowed, the appeal filed by the State in Criminal Appeal No. 2802/2011, seeking enhancement of sentence does not survive for consideration and is accordingly dismissed.