

(2006) 03 KAR CK 0098

In the Karnataka High Court

Case No : Criminal Appeal No's. 276 and 1201 of 1999

State of Karnataka

APPELLANT

Vs

Ramappa Bhimappa Kattimani and Others

RESPONDENT

Date of Decision : 31-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157, 160, 161, 168, 313

Evidence Act, 1872 — Section 45

Penal Code, 1860 (IPC) — Section 148, 149, 302, 342, 436

Citation : (2006) 5 KarLJ 85

Hon'ble Judges : V. Jagannathan, J;Chidananda Ullal, J

Bench : Division Bench

Advocate : B.V. Pinto, Addl. S.P.P, for the Appellant; C.H. Jadhav, Amicus Curiae in Crl. A. No. 276/1999 and Mallikarjun S. Masali, Amicus Curiae in Crl. A. No. 1201 /1999, for the Respondent

Judgement

1. 5th October, 1991 was a black Saturday in the lives of Phulabai, Vimalabai, Gourabai, Channabasappa, Masuteppa, Sadashiva, Malkappa, Shivanand, Shrishail and Mallappa Havappa Kattimani. It was on that day, these persons were burnt alive in the house of Channabasappa. When the accused persons chased the above persons and the deceased persons took shelter in the house of Channabasappa, the accused encircled the house of Channabasappa and the neighbouring houses and they set fire to the house of Channabasappa as well as the house of Pavitra Bai, teacher (tenant of Channabasappa) and the said act was done by the process of procuring kerosene with the help some of the accused and it was sprinkled on the house of deceased Channabasappa and the teacher above named, and firewood was brought by some of the accused and some of the accused lit fire and set the houses ablaze and due to the fire engulfing the houses, the above named ten persons were literally baked to death. One of the victims had a child in her womb and the said child also did not see the light of the day. Thus, in all eleven lives were lost.

2. The reason for this ghastly act of the accused was that deceased

Channabasappa assaulted one Amogi of Anjutagi Village on the same day in the morning and angered by this act of Channabasappa, Amogi's son Anand and other accused persons committed the gruesome murders of above named ten persons by setting the houses on fire by which not only ten lives were lost, but the houses were damaged causing great loss to the property.

3. The accused persons numbering 27 were put at trial and the offences alleged against them were under Sections 148, 302, 506, 342 and 436 read with 149 of the I.P.C. The trial court acquitted all the accused persons and hence, the two appeals by the State. CrI.A.No. 276/1999 is in respect of 24 respondents and CrI.A.No. 1201/1999 is in respect of 1 accused i.e., A-18 against whom the case was split up earlier and tried separately, but the judgment rendered in both the cases is based on common evidence.

4. The factual matrix of the prosecution case can be stated briefly as under:

Deceased Channabasappa was resident of Baradol Village and he was an elderly person who used to settle the disputes among the villagers by holding the panchayat. Sometimes later, one Amogi the father of the accused Anand joined hands with deceased Channabasappa and both of them were engaged in settling the disputes among the villagers. Later on difference arose between the two, because Channabasappa wanted Amogi to adopt fair procedure in settling the disputes. The difference widened between the two, leading to two factions in the village. One led by deceased Channabasappa and the other was headed by Amogi. There were number of petty quarrel between the two in the past, which is reflected in the cases registered against both the parties. It was (sic) this background that led to the incident in question.

5. On 5.10.1991, an incident took place first at the place where Amogi was residing and the said Amogi was assaulted by deceased Channabasappa and his group. Following this incident, rumours spread in the village about the assault on Amogi and his faction led by Amogi's son Anand (A9) and other accused persons chased Channabasappa and his group. Channabasappa and his party took shelter in the house of Channabasappa. This was around 7 a.m. on that day. The accused persons led by A9 Anand supported by A1 Ramappa, A19 Shrishail, A20 Siddarth ensured that deceased Channabasappa and nine of his colleagues who went inside the house of Channabasappa, do not come out of the house, by bolting the doors from outside and some of the accused stood around the house of Channabasappa holding axe in their hands. Some of the accused, who were women brought kerosene in vessels and the kerosene was sprinkled on the house of Channabasappa. Firewood was also brought to the place and so also the items like salt and chilli powder. A9 Anand climbed the roof of the house of Channabasappa and from the ventilator of the house on top, he threw fireballs inside the house and as the house started to burn, all the other accused joined in the act by giving all the assistance to main accused persons to ensure that the house of Channabasappa gets engulfed in fire, so that all the inmates of the house numbering ten do not survive at any cost. The act of the accused was

successful, in the sense all the ten persons who were inside the house of Channabasappa were burnt to death and due to suffocation all of them died and their bodies were charred. The accused persons threatened the eyewitnesses who were present at the spot with dire consequences. The house of the teacher above named was also set on fire. The incident of setting the house on fire leading to death of ten persons was witnessed by several eyewitnesses. One person went and informed the police constables and other officials who were at the police station at Chadachana. PWs.36, 37, 38, 47 and 50 were at the police station and they received the information about the house of Channabasappa being set on fire. PW23 Havappa also went to the spot on hearing about the incident. PW1 Vatsala Bai gave her complaint and it was reduced into writing by PW49 as per Ex.P-1. PW45 CPI took the complaint and gave it to PW43. The PSI sent it to the PC734 and PW43 after receiving Ex.P-1 registered the case in Cr.No. 134/91 and sent the FIR as per Ex.P-39 through PC734. PW48 carried FIR to the court and delivered at 12.30 p.m. to the Magistrate.

6. PW36 Mallappa the Head constable who goes to the spot finds A1 Ramappa still throwing salt to the house which was burning and the said A1 is apprehended by the PSI and handed over to PC 1556. PW43 Prabhakar, Head Constable informed the Fire Brigade to come and extinguish the fire. PW36 and others get the dead bodies removed from the house, which was burnt during the incident PW34 assisted in removing the dead bodies from the house of Channabasappa and the dead bodies were subjected to inquest and the panchas who spoke about the incident are PWs. 13, 14, 26, 29 and 44. The inquest is held and the dead bodies are identified as those of ten persons first above mentioned and all belonged to Channabasappa's group including Channabasappa. The Fire Brigade arrives to the spot and the fire is extinguished is spoken to by PWs. 28, 36, 37, 38, 41, 42, 43, 45 and 49. Requisitions were sent to the doctors to conduct post-mortem examination. The charred bodies were subjected to postmortem examination and the doctors PWs.24, 25 and 31 conducted the postmortem examination over the charred bodies of the deceased persons. PW54 is another doctor who has identified the signature of Dr. Kadam in the postmortem report Exs.P-52 to 55. The investigation was conducted by the police officers PWs. 15, 51 and 55. The damage caused to the houses of channabasappa and the teacher has been spoken to by PW32. A1 Ramappa is apprehended at the spot, which is spoken to by PWs.36, 37, 40, 42, 45 and 47. The inquest panchas who spoke to the inquest being held on the dead bodies are PWs, 13, 14, 26, 29 and 44. The investigation which included conducting of various panchnamas, seizure of material objects at the spot and the clothes of the deceased as well as weapons from the accused persons, arrest of the accused persons and recording of the statements of the material witnesses. To mention briefly, PW20 speaks to the seizure of weapons, PWs. 40 to 48 and 53 speak to the arrest of the accused persons. PW55 who is the main Investigating Officer in this case completes the entire investigation and submits the charge sheet against the accused persons.

7. At the trial, the prosecution in order to establish its case against the accused persons, examined PWs.1 to 55. The documents Exs.P-1 to P-65 were marked. Material Objects MOs. 1 to 48 were produced. Certain portions of the statement of the witnesses as well as certain documents, which were got marked by the police officers on behalf of the accused, are also placed on record as per Exs.D-1 to D34. The accused did not choose to lead any defence evidence after recording of the 313 statement.

8. The learned trial judge after appreciating the entire evidence on record formulated certain conclusions, which are mentioned at para 225 of the judgment and based on those conclusions and more particularly, on finding that the testimony of the eyewitnesses did not inspire confidence because of the difficulty to separate grain from the chaff or truth from the falsehood, discarded the eyewitnesses testimony in toto. The trial court also found defects in the prosecution case with regard to the presence of some of the accused persons at the spot, the complaint being suppressed by the police, the conduct of the deceased as well as the witnesses being unnatural and there were lapses in the investigation and taking note of these defects, the trial court acquitted the accused persons of all the offences with which they stood discharged. The trial court also did not believe the evidence adduced by the prosecution in regard to arrest of the accused persons and recovery of the weapons and ultimately, the order of acquittal was passed. Aggrieved by the order of acquittal in both the cases, the State has preferred the two appeals against the judgments dated 30.11.1998 and the other one is dated 30.4.1999.

9. We have heard the submissions made by the learned Addl. S.P.P. for the State Sri. B.V. Pinto and the two counsels appearing in the two appeals as Amicus Curiae at the instance of this Court on the entire matter and with their assistance, carefully perused the entire material on record including the judgments of the trial court.

10. Learned State counsel, referring to the evidence on record submitted that the prosecution has examined as many as 17 eyewitnesses to establish its case against the accused persons and the evidence of the eyewitnesses clearly implicates the accused persons and their testimony has not suffered anything in the cross-examination and as such, all the eyewitnesses have spoken more or less in one voice with regard to the accused setting the houses of Channabasappa and the teacher Pavitra Bai on fire and the role played by the accused persons has also been spoken to by the eyewitnesses. There is corroboration in the evidence of the eyewitnesses when compared with one another. The trial court has failed to appreciate the evidence of the eyewitnesses which is cogent and consistent and has wrongly concluded that the testimony of the eyewitnesses will have to be discarded because of the difficulty in separating the grain from the chaff. This conclusion of the trial court is totally erroneous and contrary to the evidence on record with regard to the complaint Ex.P-1 is concerned. There is no discrepancy at all and if at all there is any lapse on the

part of the police, at the most, it may be because of negligence on the part of the police officials, but the fact that the complaint has been lodged within few hours of the incident and the police reached the spot within 12 noon on the very same day, That itself goes to show that there is promptness in both lodging of the complaint and delivering it to the court. As such, the trial court has totally erred in holding that there was suppression of complaint. With regard to the presence of the accused persons, it was submitted that the testimony of the eyewitnesses would go to indicate the role played by each of the accused persons in the incident and the accused having not been able to place any convincing evidence to show that some of them were not present during the incident in question (sic) therefore, the trial court has proceeded totally in a wrong direction and has disbelieved the evidence of the eyewitnesses. Referring to the medical evidence and the evidence leading to recovery of the weapons and arrest of the accused A1 Ramappa at the spot, learned S.P.P. submitted that the trial court could not have rejected the evidence of the eyewitness who were numbering 17 and therefore, there has been a grave injustice done to the case on hand and having regard to the manner in which the accused persons have committed the brutal act, the prosecution has not only established the case against the accused in its entirety, but also submitted that severe punishment will have to be given to the accused persons. In support of the above submissions, learned SPP took us through the entire evidence of the medical witnesses in detail and also referred to the trial court's reasoning in this regard.

11. On the other hand learned Amicus Curiae Sri C.H. Jadhav for the respondents in CrI.A.No. 276/1999 supported the trial court's findings and submitted that the trial court has discussed every aspect of the matter in great detail and the reasoning of the trial court cannot be termed as perverse. It was further submitted that the complaint which was given by Havappa and another person at police station was not registered at the first instance and therefore Ex.P-1 cannot be termed as the original complaint and there is suppression of the original complaint itself. Secondly, it was submitted that the presence of accused persons viz., A9, A11, and A20 at the spot cannot be believed, particularly having regard to the documents Exs.D-3 and D-10 and some of the police witnesses have stated about the presence of A11 Dundappa at the police station and the said Dundappa accompanied injured Amogi to the police station and to the hospital at Bijapur as well as presence of these witnesses has not been proved by the prosecution and this is (sic) clear from the reply given by these persons in 313 statement also and the testimony of eyewitnesses cannot be believed because of the false implication and therefore, the trial court has rightly rejected the testimony of the eyewitnesses as unreliable because of this reason that the truth and falsehood are found to be mixed in their evidence and it was found (sic) difficult to separate the truth from the falsehood and as such, the trial court was justified in rejecting all the eyewitnesses in toto. For this reason alone, the acquittal of the accused persons requires to be upheld by this Court. It was also submitted that there was unfairness in the investigation as could be seen from

the evidence of the police officers, and who apprehended A1 is not clear from the evidence of the police officers and likewise, who handed over A1 (sic) to whom is also not clear from the evidence on record. Therefore, possibility of concoction, deliberation and false implication cannot be ruled out. Learned Counsel also referred to the omissions in the evidence of the eyewitnesses Which have been brought out from the evidence of I.O. PW55 and to this reference has also been made by the trial court in the course of its judgment. In the light of such omissions and contradictions, it was unsafe to accept the testimony of the eyewitnesses in particular. On these grounds, learned Amicus Curiae Sri. Jadhav submitted that no interference is called for by this Court sitting in the appeal against the judgment and order of (sic) passed by the trial court having regard to the scope of interference by this Court while sitting in appeal.

12. Learned Counsel Sri. Mallikarjun S. Masali, Amicus Curiae for the sole respondent in Crl.A. No. 1201/99 also adopted the argument advanced by learned Counsel Sri. Jadhav, but supplemented it by stating that having regard to Ex.D-3 and the other observations made by the trial court at para 135 of the judgment, the benefit of doubt should be given to the accused persons. Learned Counsel also submitted by referring to para 147 of the judgment of trial court, that the investigation was not proper and in Ex.P-1 names of some of the accused i.e., A8, A11, A12, A14, A20 and A25 do (sic) not find a place. Therefore, it was submitted by the learned Counsel that the respondent in Crl.A.No. 1201/99 has been rightly acquitted by the trial court and hence, the said acquittal does not call for interference. By way of reply, learned Addl. S.P.P. submitted that the presence of the accused persons who accompanied injured Amogi to the hospital has been spoken to by the witnesses and as such, there is no force in the submission made by the respondents that A9, A11 and A20 did accompany injured Amogi to the hospital.

13. Having thus heard the submissions made by the learned Counsel for the parties, the question for consideration is, whether the prosecution has proved its case beyond all reasonable doubt and thereby requiring interference by us against both the judgments and orders of acquittals passed by the trial Court?

14. Before answering the above question, we would like to recall the observations of the Apex Court with regard to the power of the appellate court in re-appreciating the evidence while sitting in appeal. The Hon"ble Apex Court in the case of Anil Kumar v. State of U.P. 2005 SCC (Cri.) 178 has observed thus:

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 the acquittal of the guilty, is no less, than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence, where the accused had been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not.

15. Keeping in view the above parameters of law laid down by the Apex court, we shall examine the evidence on record.

16. Out of the 50 witnesses examined by the prosecution, the witnesses can be classified broadly under the following categories for the sake of convenience:

The eyewitnesses to the occurrence are PW1 who is also the complainant and PWs.2 to 11, PWs.16 to 18, 21, 22 and 23. The other witnesses (sic) who also support prosecution case with regard to incident of setting the house of Channabasappa on fire are PWs.17 and 26. These are the material witnesses on whose evidence the fate of the prosecution case rests. The medical evidence with regard to the death of ten persons in the incident of fire is spoken to by PWs.24, 25, 31 and 54. The witnesses to inquest are, PWs.13, 14, 26, 29 and 44.

17. PW8 speaks to the assault of Amogi by deceased Channabasappa. The enmity between Channabasappa and Amogi is spoken to by PWs.19, 27, 30 and 46. Arrest of the accused is spoken to by PWs.42, 46 and 53. The Fire Brigade personnel and other police officers who speak to the fire being put off are examined as PWs.28, 36, 37, 38, 41, 42, 43 and 49. PW15 is the witness who speaks to the kerosene being sold in the shop, but this witness has turned hostile, PWs.36, 37, 40, 42, 45 and 47 speak to the effect of A1 being apprehended at the spot and PW52 is the police official who carried the material object to FSL for examination. PWs.36, 37, 38 and 47 speak to the effect that one person came and informed the police about the incident of fire taking place at the house of deceased Channabasappa. PWs.43 and 48 speak to the effect that PW23 came and informed about the incident that A11 assaulted PW23 and the case was registered in that connection. As already mentioned, PWs.50 to 53 and 55 are the police officers who speak to the investigation carried out by them and the submission of charge sheet.

18. The prosecution has to establish first and foremost that ten persons died following the house of Channabasappa being set on fire by the accused persons. The medical evidence placed in this regard is spoken to by the doctors examined as PWs.24, 25, 31 and 54. The postmortem reports of the doctors are produced as per Exs.P-18, 20, 22, 24,32, 34, 52, 53, 54 and 55. The evidence of the above doctors clearly establishes that the dead bodies which were subjected to PM examination were all found charred and being burnt on account of fire and the cause of death of the deceased according to the doctors is that the deceased died due to suffocation and according to Dr. Shrishail PW24, in case of

suffocation, death will take place within 4 to 5 minutes. The evidence of PWs.25, 31 and 54 corroborate in this regard. The various inquest panchnamas conducted over the dead bodies as per the testimony of the inquest witnesses i.e., PWs. 13, 14, 26, 29 and 44 leaves no doubt as to the cause of death of the deceased persons. All the deceased were identified not only by the complainant, but many other witnesses. The postmortem report placed on record as well as the testimony of the doctors referred to above and the evidence of the inquest witnesses and those of the police officers who went to the spot soon after hearing the incident of fire, establishes beyond all reasonable doubt that the death of ten persons first above mentioned, The trial court in the course of (sic) judgment, he also observed that they died due to the burn injuries caused following the house being set on fire and they were suffocated to death. Hence, we have no difficulty in holding that the prosecution has proved beyond reasonable doubt that death of all the ten persons of Channabasappa's group was of homicidal in nature. The trial Court has also recorded the similar finding in the course of judgment and this is clear from the trial court observations in paras 58 to 60 of its judgment. Therefore, the prosecution has established that all the deceased in question died of homicidal death.

19. Now the question to be answered is who are responsible for causing the death of 10 persons, who died due to the incident of fire. It is the prosecution that all the accused persons are responsible as well as the deceased accused were mainly responsible for causing the death of 10 persons and in order to prove this, the prosecution has placed eye witnesses testimony of number of persons already mentioned by us above. Out of them, PW.1 is an eye witness and he is also the complainant in the instant case. This witness viz., Vatsala Bai is also related to deceased - Chennabasappa as the deceased was the younger brother of mother of PW.1. With regard to the incident of setting the house of Channabasappa on fire, PW.1 has given a graphic description of the entire incident and having regard to the nature of evidence given by her, we are compelled to reproduce the testimony of PW.1 hereunder:

5. Deceased Chanabasappa was a member of Nyaya Panchayati in our village. He was deciding disputes. Amogi came to our village 20 years prior to incident. Our Mama (reference to deceased Chanabasappa) was settling dispute in our village. Amogi was native of Anjutagi village. Amogi came to our village as a Goundi (Mason) and started residing in our village. Our Mama and Amogi were settling dispute in our village. Our Mama was telling Amogi that Amogi was to settled the disputes properly as the villagers were amicably living and he should not crate division in the villagers. Thereafter Amogi had his own party in our village, therefore, villagers became two parties i.e., one party of our mama and other party of Amogi. All the accused before Court are the members of Amogi party.

6. On that day, before sunrise, I was in my house. I learnt that hue and cry was going on from the side of house of our Mama. Our house and the house of our Mama are nearer to each other. Myself, Subhadrabai, Malakappa, Mallikarjun my

son ran there. All the accused before Court, Shobha and Buddhappa were pelting stones towards the house of our Mama, windows and doors of his house. Dondappa came running near the house of our Mama. He told that close the doors and bolt it (Kondi hak bidari) and burn them. Female fold came running near the house of our Mama, The said woman folk brought fire wood near the houses of Chour Madam. That house of Chour Madam is adjacent to the house of our Mama. It belongs to our Mama. It was let out, Subhadravva brought fuel lying near heer house and placed near the house of our Mama i.e., in front of the door of the house of our Mama. Woman fold viz. Padma, Yallavva, Janabai, Vimalabai threw salt and chilly power into the house of our Mama. Muktabai, Nimbewwa, Laxmibai, Janabai threw salt and chilly powder into the house. Anand s/o. Amogi climbed the top of house of our Mama and threw salt and chilly powder through skylight of the house (Belakhindi). Also poured kerosene from a tin into the house of our Mama through Belakhindi. The said Anand tied the cloth to a stick made Hilal, set fire to it and threw the burning Hilal into the house of our Mama through Belakhindi. Flames caught in the house. He climbed down the house and told others to set fire to the doors of the said house. Siddharth poured kerosene oil to the door of the house of our Mama and also poured kerosene on the firewood placed near the said door. Siddarth brought one tin of kerosene, Buddappa had a tin of kerosene, Chikkappa had a tin of kerosene. Shobha brought a tumbler (chambu) Siddarth poured the kerosene from the tins into the tumbler and from tumbler the said kerosene was sprinkled on firewood and door of the house. Anand s/o. Amobi told "I have set fire in the house and you set fire outside and house". Number of persons were present at that time. Laxman Savakar came there and told the accused not to set fire to the house and it may cause Anuhuta (it may cause disaster) Shrishail, Ruddappa, Dandappa, Channappa abused that Sawkar also threatened him that he will face the same fate. Siddarth striked the match stick and set fire the firewood and door. He told all others to go away and he set fire.

7. Our Mamas in the house outed to leave them and not to burn them and raised hue and cry. We also requested the accused not to do so but accused threatened us saying that we also thrown into the burning house. The accused also set fire to the adjacent house of our Mama which was let out to Chour Madam. Firewood was brought and placed near the door of the house of Chour Madam. Chikkappa poured kerosene from Dabbi on the said firewood near the door of house of Chour Madam. The fire was set to the said firewood near the door of the house of Mada. House of Malappa is in front of the house of Chanabasappa. Siddarth poured kerosene on the firewood placed near the house of Malappa and set fire to the said firewood and door of the house. Children of Malappa in the house of rushed out of the house. Shrishail held the child and attempted throw the same into the house. Rest of the accused were brining firewood throwing near the house of our Mama, pouring kerosene, throwing salt and chilly powder. Tow house of our Mama were burning. Sadashiva s/o. Chanabasappa attempted to rush into the burning house. Accused threw chilly powder into the eyes of

Sadashiva. Persons in the said house were burnt and died.

8. Dasharat, Buddappa, Sidrama, Laxman, Mallappa, Sidaraya, Tukaram, surrounded the said burning house and were armed with weapons. They were shouting others should not come there and if they go there to rescue they will be assaulted. Shrishail was holding axe, Channappa was holding axe, Abhimanyu was holding axe, Ramappa and Buddhappa were holding clubs. There was a shade (Neraki - Chappar) in front of the house of our Mama. Other accused pulled it down and it was thrown into the burning house. Tukaram, Dasharat, Laxman pulled down Neraki and threw it into the burning house. Other accused - Channappa, Sukhadev, Laxman another Laxman were threatening other villagers not to rescue.

20. PW.1 in her evidence has further stated that a police jeep came at 8.00 a.m. and the houses were found burning and accused - Ramappa was throwing salt into the burning house and. the police apprehended Ramappa and other accused persons ran away and so also the villagers. She has also stated that she and others poured water into the burning houses and the vehicle with water came from Bijapur and fire was put off and all the dead bodies were removed from the burning house and she identified the dead bodies as thus:

Chanabasappa, 2) Masuteppa, 3) Malappa, 4) Shrishail, 5) Sadashiva, 6) Malkappa, 7) Shivanand, 8) Pulabai, 9) Gourabi and 10) Vimalabai i.e. seven male and three female persons. Subhadra, Malku, Sharanappa saw the dead bodies and identified them.

She has also stated that her complaint was recorded by the police and it was read over to her and the complaint, which was reduced into writing in Ex.P21.

21. The other eye witnesses, who have supported the testimony of PW.1 and also gave detail account of the incident, are PW.2 - Subhadra, PW.3 - Malakappa, PW.4 - Kamalabai, PW.5 - Sharanappa, PW.6 - Shivaningappa, PW.7 - Mahadev, PW.9 - Vimalabai, PW.10 - Sushilabai, PW.16 - Sarubai, PW.18 - Narasappa, PW.21 - Mallikarjun and PW.22 - Shivabai. These witnesses have spoken to almost on the lines of the testimony of PW.1 with regard to the role played by the accused - Anand, Nimbewwa, Ramappa and Subhadra and other accused persons and they also speak to the role played by the women accused during the course of the incident and the women accused brought fire wooden, supplied kerosene and also sprinkled kerosene on the house of Channabasappa and the other accused persons threatened with dire consequence.

22. The cross-examination of all the eye witnesses reveals that the substratum of the prosecution case has not been affected in many manner and these witnesses have been questioned with regard to the topography of the place surrounding the house of Channabasappa and certain omissions have also been put to them in the course of the testimony. Some of the eye witnesses, who have given detail account of the incident, have not been seriously cross-examined and they are PWs.11, 16, 18, 21 and 22. Even PW.1 has deposed in her cross-examination

with regard to the material part of the evidence deposed by her.

23. On a careful scrutiny of the evidence of eye witnesses, we are fully satisfied that the eye witnesses have spoken about the incident in truthful manner and their testimony appears to us as truthful and reliable.

24. In fact, we would like to refer to the able assistance given by learned Amicus Guriae, Sri C.H. Jadhav and Sri Mallikarjun S Masali and they have placed on record the chart indicating individual overt act attributed to each of the accused persons and we feel that it would be proper to place the chart itself in the judgment as it would help us to know at a glance the role played by each of the accused persons as spoken to by the eye witnesses in the course of their examination. The said chart reads thus:

	A1	A2	A3	A4	
					PW1 1)
					Armed with 1)Armed Threw salt Threw salt club with weapon and chilli and chilli
					2) Threw salt(20) 2)pulled powder into powder into down nikari h/o h/o -
					chappar deceased deceased and threw (18) (18) into fire(20)
					PW2 1) Locked door of 1) Armed Threw salt h/o deceased(30) with
					club into fire(31) 2) Threatened 2) Threatened PW12 PW12(31) 3) Armed with
					club 4) Threw wood into fire(31)
					PW3 1) Locked
					door of Armed with 1) pulled h/o deceased(34) club(35) down nikar-
					2)Threatned chappar and PW12 threw into 3)Armed with fire club 2) Threw
					salt 4) Threw wood into fire (35) into fire (35)
					PW4
					1) Locked door of Amred with Threw salt Put wood in h/o deceased club (39)
					into fire (39) front of h/o 2)Armed with PW32(40) club(39)
					PW5 Armed with Armed with club(43) club(43)
					PW6 1) Locked door of Bought salt h/o deceased and 2) Threatened
					number(46) PW 12 3) Armed with club 4)Threw salt into fire(46)
					PW7 1) Threatened 1) Armed people with club 2) Armed with
					2)Threatened club people(51) 3)Threw salt into fire(51)
					PW9 1) Locked door of Armed with 1) Threw salt h/o deceased (56)
					club(57) into fire(57) 2)Abused PW12 3)Armed with club 4)Threw salt into
					fire(57)
					PW10 1) Locked door of filled down Bought
					salt h/o deceased Nikari- and was 2)Armed with chappar and throwing it
					club(59) threw in (60) front of h/o PW32(60)

_____ PW11
 1)Locked door of Bought salt, h/o deceased chilli and 2)Abused PW12 threw it
 into 3)Armed with fire(62) club 4)Threw salt into fire(62) _____
 _____ PW12 _____
 _____ PW16 1)Throwing salt Threw 2)Armed
 with salt(73) club(73) _____
 _____ PW18 1)Armed with Threw
 salt club into fire(77) 2)Throwing salt(77) _____
 _____ PW21 1)
 threatened PW12 2)Put wood in front of h/o PW32(82) _____
 _____ PW22 Armed with Threw club(84) salt(84) _____
 _____ PW36
 Threw salt(123) _____
 _____ PW37 Threw salt(127) _____
 _____ PW45 Threw salt(151) _____
 _____ PW47 Threw salt
 (156) _____
 _____ PW49 Threw salt(162) _____

 _____ A5 A6 A7 A8 _____
 _____ PW1 Threw
 salt and Threw salt Bought fuel chilli into and chilli from her house(18) into h/o
 house and deceased(18) placed in front of door of h/o deceased (18) _____
 _____ PW2 Bought wood from her house(31- 32) _____
 _____ PW3 Pulled down nikari- Bought chappar and threw wood from in
 fire(35) her house and threw it in fire(34) _____
 _____ PW4 Put
 wood in Put wood in Bought front of h/o front of h/o wood from PW32(40)
 PW32(40) her house(39) _____
 _____ PW5 _____
 _____ PW6 Threatened Bought people(47) wood from her house and placed in
 front of door of h/o deceased(45) _____
 _____ PW7 Bought wood
 from her house and threw into fire (on h/o deceased)(50) _____
 _____ PW9 Bought wood from her house(56- 57) _____

PW10 Bought wood from her house and threw in front h/o deceased(60) _____

_____ PW11 Brought wood from her house and threw(62) _____

_____ A9 A10 All A12 _____

_____ PW1 I) Climbed h/o Armed with 1) Told to 1) Armed deceased weapon(20) lock door of with weapon 2) Threw salt and h/o 2) Pulled chilli powder, deceased down nikari poured kerosene and set chappar and through belakindi fire(18) threw in and set fire 2)Threatened fire(20) 3) Instigated others PW 12(19) to set fire(18-19) _____

_____ PW2 1) Bought kerosene Threatened 2) Climbed h/o people(31) deceased 3) poured kerosene through belakindi and set fire(30,31) _____

_____ PW3 1) Climbed h/o 1)Instigated Threatened deceased to burn people(35) 2) poured kerosene deceased(34) through belakindi 2)threatened and set fire(340) people(35) _____

_____ PW4 I) Bought kerosene Instigated to I)Instigated 2) Climbed h/o kill to burn deceased others(40) deceased(39) 3) poured kerosene through belakindi and set fire 4) Instigated A20 to set fire to door(39) _____

PW5 _____

_____ PW6 I) Bought kerosene 1)Instigated 2) Climbed h/o to bum deceased deceased 3) poured kerosene (45) through belakindi and set fire 4) Instigated A20 to set fire at the bottom(46) _____

_ PW7 1) Bought kerosene Pulled down 2) Climbed h/o nikari deceased chappar, 3) poured kerosene placed it through belakindi near the and set fire door of h/o 4) Instigated A20 to PW32 set fire to poured door(50,51) kerosene and set fire (51) _____

_____ PW9 I)Climbed h/o Instigated to deceased set fire (56) 2)poured kerosene through belakindi and set fire 3)Instigated A20 to set fire(57) _____

_____ PW10 1)Bought kerosene 1)Pulled Instigated to 1)Threatened 2)Climbed h/o down nikari set fire to people deceased chappar, deceased 2)Pulled 3)poured kerosene placed in (59) down nikari through belakindi front of h/o chappar, and set fire PW32 placed in 4)Instigated A20 to 2)Threatened front of h/o set fire to door (60) people(60) PW32(60) _____

_____ PW11 1)Bought kerosene _____

2)Climbed h/o deceased 3)poured kerosene through belakindi and set fire
4)Instigated others to set fire (62) _____

_____ PW 16.
1)Climbed h/o deceased 2)poured kerosene through belakindi and set fire
(73) _____

_____ PW17 _____
_____ PW18

1)Climbed h/o deceased 2)poured kerosene through belakindi and set fire
3)Instigated others to set fire(77) _____

_____ PW21 1)Climbed h/
o deceased and set fire 3)Instigated others to set fire(82) _____

_____ PW22 1)Climbed h/o deceased 2)poured kerosene through belakindi
and set fire 3)Instigated A20 to set fire(84) _____

_____ A13 A14 A15 A16 _____

_____ PW1
Armed with Threw salt Threw salt Threw salt weapons(20) and chilli and chilli
and chilli powder into powder into powder into h/o h/o h/o deceased deceased
deceased (18) (18) (18) _____

_____ PW2 Pulled down nikari
chappar, threw in fire (31) _____

_____ PW3 Threw wood into
Pulled down Threw wood Threw wood h/o PW32(35) nikari into h/o into h/o
chappar, PW32 (35) PW32(35) threw in fire(35) _____

_____ PW4 Pulled down nikari Threw wood Threw wood chappar, threw in into h/o into
h/o fire (40) PW32(40) PW32(40) _____

_____ PW5 _____
_____ PW6 Threatened people(47) _____

_____ PW7 Pulled
down nikari chappar , placed it to door of h/o PW32, poured kerosene and fire
(51) _____

_____ PW9 Pulled down nikari chappar and threw in
front of h/o PW32 (56) _____

_____ PW10 _____
_____ PW11 _____

_____ PW16 Armed with club(73) _____
_____ PW17 _____

_____ PW18 Pulled down nikari chappar

and threw in front of h/o deceased (77) _____

_____ PW21 _____

_____ PW22 Pulled down nikari chappari and threw in front of h/o deceased (84) _____

_____ A13 A14 A15 A16 _____

_____ PW1

Armed with Threw salt Threw salt Threw salt weapon(20) and chilli and chilli and chilli powder into powder into powder into h/o h/o h/o deceased deceased deceased (18) (18) (18) _____

_____ PW2 Pulled down nikari chappar, threw in fire (31) _____

_____ PW3 Threw wood into Pulled down Threw wood Threw wood h/o PW32 (35) nikari into h/o into h/o chappar, PW32(35) PW32(35) threw in fire (35) _____

PW4 Pulled down nikari Threw wood Threw wood chappar, threw in into h/o into h/o fire (40) PW32 (40) PW32 (40) _____

_____ PW5 _____

_____ PW6 Threatened people (47) _____

_____ PW7

Pulled down nikari chappar, placed it to door of h/o PW32, poured kerosene and fire (51) _____

_____ PW9 Pulled down nikari chappar and threw in front of h/o PW32 (56) _____

_____ PW10 _____

_____ PW11 _____

_____ PW16 Armed with club(73) _____

_____ PW17 _____

_____ PW18 Pulled down nikari chappar and threw in front of h/o deceased (77) _____

PW21 _____

_____ PW22 Pulled down nikari chappar and threw in front of h/o deceased (84) _____

_____ A17 A18 A19 A20 _____

_____ PW1

Threatened 1)Bought 1)Threatened Brought villagers (20) kerosene PW12
kerosene 2)Threatened 2)tried to and poured FW12(19) throw it on wood
3)Armed with children of placed on club (20) malappa the door of into fire(19)
h/o 3)Armed deceased with and h/o club(20) malappa and set fire (19) _____

_____ PW2 Pulled down nikar Bought Armed with 1)bought
chappar and threw kerosene sickle(31) kerosene in fire(31) (31) and poured it
on wood placed on the door of h/o deceased and h/o malappa and set fire
2)Instigated others to set fire (30,31) _____

_____ PW3 Put
wood into h/o 1)Threatened Armed with Poured PW32(35) PW12 sickle (35)
kerosene on 2)Armed wood placed with on the door club(35) of h/o deceased
and h/o malappa and set fire (35) _____

_____ PW4 Armed with
Poured sickle(39) kerosene to h/o deceased and h/o malappa and set fire
(39,40) _____

_____ PW5 Armed with sickle (43) _____

_____ PW6 Threatened people Bought Armed with 1)Armed (47)
kerosene(46) sickle(46) with sickle 2)Bought kerosene. poured it on wood
and set fire 3)Threatened PW 12(46) _____

_____ PW7 Pulled
down nikari Pulled down 1)Armed Poured chappar, placed it nikari with sickle
kerosene on to door, poured chappar, 2)Threatened wood placed kerosene and
set placed it to d people(51) in front of door, h/o Poured deceased kerosene
And h/o and set malappa fire(51) And set fire (50,51) _____

_____ PW9 1)Abused Armed with 1)bought PW12 sickle(57) kerosene, 2)Bought
poured it on kerosene wood placed and poured on door of on wood(57) h/o
deceased and h/o malappa and set fire (57) _____

_____ PW10
Poured Armed with 1)bought kerosene(60) sickle (59) kerosene, poured it on
wood placed on door of h/o deceased and h/o malappa And setfire(60) _____

_____ PW11 Abused 1)Kept wood 1)bought PW 12(62) on door
of kerosene, h/o poured it on deceased wood placed 2)Armed on door of with
h/o sickle(62) Deceased and h/o malappa and setfire(62) _____

_____ PW16 Armed with Poured sickle(73) kerosene on wood placed on door
of h/o deceased and h/o malappa and set fire(73) _____

_____ PW17 Poured kerosene on the window of h/o malappa and set fire(75) _____

_____ PW18 1)Pulled down Armed with 1)poured nikari chappar
sickle(77) kerosene on threw in front of wood placed h/o deceased on door of

2) Armed with h/o sickle (77) deceased and h/o malappa and set fire.
2) Pulled down nikari chappar threw in front of h/o deceased (77) _____

_____ PW21 1) Put wood Put wood in 1) poured in front of front of h/o
kerosene on h/o PW32 PW32(82) wood placed 2) Threatened on door of
people(82) h/o deceased and set fire (82) _____

_____ PW22
Pulled down nikari Armed with Armed with Set fire to chappar threw in
sickle(84) sickle(84) h/o front of h/o deceased deceased(84) (84) _____

_____ A21 A22 A23 A24 _____

_____ PW1
1) Armed with Armed with 1) Threatened 1) Armed weapon sickle(20) PW12 and
with weapon 2) Threatened villagers 2) Threatened villagers 2) Armed villagers
3) pulled down with 3) pulled nikari chappar and axe(19,20) down nikari threw it
in fire(20) chappar and threw it in fire(20) _____

_____ PW2
Threatened Armed with 1) Instigated people(31) sickle(31) to burn deceased
2) armed with sickle(30,31) _____

_____ PW3 Threatened Armed
with Armed with people(35) sickle(35) sickle(35) _____

_____ PW4 Armed with Armed with sickle(39) sickle(39) _____

_____ PW5 Armed with Armed with sickle(43) sickle(43) _____

_____ PW6 Armed with Armed with sickle(46) sickle(46) _____

_____ PW7 pulled down nikari 1) Armed Armed with Pulled down chappar, poured with
sickle sickle(50) nikari kerosene and set 2) Threatened chappar, fire(51)
people(51) poured kerosene and set fire(51) _____

_____ PW9
Pulled down nikari Armed with Armed with Pulled down chappar and threw
sickle(57) sickle(57) nikari it in front of h/o chappar and PW32 fire (57) threw it
in front of h/o PW32 fire (57) _____

_____ PW10 1) Pulled down
Armed with Armed with 1) Pulled nikari chappar and sickle(59) sickle(59) down
nikari threw it in front of chappar and h/o PW32 threw it in 2) Threatened front
of h/o people(60) PW32? 2) Threatened people?(60) _____

_____ PW11 Armed with 1) Armed sickle(62) with sickle 2) Kept wood on the door of
h/o deceased (62) _____

_____ PW16 Armed with Armed with
sickle(73) sickle(73) _____

_____ PW17 _____

PW18 1)Pulled down Armed with Armed with 1)Pulled nikari chappar and
sickle(77) sickle(77) down nikari threw it in front of chappar and h/o deceased?
(77) threw it in front of h/o deceased? (77) _____

_____ PW21 _____

_____ PW22 1)Pulled down Armed with Armed with 1)Pulled
nikari chappar and sickle(84) sickle(84) down nikari threw it in front of chappar
and h/o deceased?(84) threw it in front of h/o deceased? (84) _____

_____ A25 A26 A27 Shoba (juvenile) _____

_____ PW1 Armed with Threw salt Bought Bought weapon(20) and chilli kerosene,
tumbler(19) powder into poured and h/o set fire to deceased? h/o (18)
PW32(9) _____

_____ PW2 Pulled down nikari Bought Threw salt
chappar and threw kerosene, into fire(31) in fire(31) poured and set fire to h/
o PW32(31) _____

_____ PW3 Threw wood to the Pulled down
Poured Threw salt h/o PW32(35) nikari kerosene into fire(35) chappar and
set fire threw in to h/o fire(35) PW32(35) _____

_____ PW4
Pulled down nikari Threw wood 1)poured Bought salt chappar and threw in front
of kerosene and threw it in fire(40) h/o and set fire into fire(39) PW32(40) to h/
o PW32 2)Instigated A20 to set fire to h/o malappa(40) _____

_____ PW5 _____

_____ PW6 Bought salt And tumbler(46) _____

_____ PW7 Pulled down nikar Bought and Bought salt chappar, put it
to poured And door and set kerosene tumbler(51) fire(51) and set fire to h/o
PW32(51) _____

_____ PW9 Pulled down nikari Bought and
1)Bought chappar and threw poured tumbler it in front of h/o kerosene
2)Poured PW32(57) and set fire salt(51) to h/o PW32(57) _____

_____ PW10 Pulled down nikari 1)Pulled Bought salt chappar and threw down
nikari and tumbler it in front of h/o chappar and 2)Poured PW32(6) threw in
salt into front of h/o fire(60) PW32 2)Bought and poured kerosene and set

fire to h/o PW32(60) _____

_____ PW11 Armed with Bought and
 1)Bought club(62) Poured tumbler kerosene 2)Poured and set fire salt(62) to
 h/o PW32(62) _____

_____ PW16 Poured Threw kerosene
 salt(73) and set fire to h/o PW32(73) _____

_____ PW17 _____

_____ PW18 Pulled down nikari Poured Threw chappar and threw
 kerosene salt(77) it in front of h/o and set fire deceased(77) to h/o PW32(77) _____

_____ PW21 Along with 4-5 persons threw wood in front of
 h/o PW32(82) _____

_____ PW22 Pulled down nikari Threw
 chappar and threw salt(84) it in front of h/o deceased (84) _____

25. Thus we find that the evidence of eye witnesses has got a ring of truth and having regard to the fact that the incident happened in the year 1991 and the witnesses were called upon to depose before the court almost 4 to 5 years, that is, in the year 1994-95, certain lapses are bound to occur in their evidence when compared to their statements recorded u/s 161 of the Cr.PC. But some omissions and lapses are but natural when there is a long time gap between the date on which the incident had happened and the date on which the witnesses were called upon to depose before the court. Therefore, the contradictions and omissions (sic) marked through the evidence of PW.55 by the defence cannot be given undue importance as they do not affect the root of the prosecution case.

26. Thus we find that the evidence of eye witnesses has been fully supported by the medical evidence on record and various inquest panchanamas have also confirmed the fact of dead bodies being brought out from the burnt house and subjected to examination and description given in the panchanamas would go to show that all 10 persons died by suffering severe burns and they were suffocated to death. The clothes of the deceased have been identified by the witnesses as can be seen from the evidence of PW.13 - Jagadev, who has identified MOs.1 to 43 and he has also testified with regard to the inquest panchanama as per Exs.P4 to P6. PW.14 speaks to the inquest panchanama as per EXs. P.9 to P. 11 and the seizure of firewood-MOs.44 and 45 as well as axe-MO.46 as per Ex.P12. PW.20 speaks to the seizure of Mos. 47 and 48 axes from accused - Abhimanyu and Channabasu as per Exs.P14 and 15 respectively. PW26 speaks to the inquest panchanamas as per Exs.P.25 and P26. PW.29 speaks to the inquest panchanama as per Exs.P29 and P30. PW.36 speaks to the seizure of MOs.26, 27, 32 and 33. FW.37 speaks to the seizure of Mos.41 and 43 during the inquest. PW.38 speaks to the effect that he collected MOs.35 to 37. PW.41 speaks to Mos.28 to 31, which were collected by him during the inquest. PW.42 testifies with regard to

the inquest and arrested Nos. 2,3,4,6,7, and 8 as per Ex.P38. PW.44 deposes about the inquest held on the deceased as per Ex.P9 and the arrest of accused Nos. 20, 21, 26, 25 and 24 as per Exs.P50 and 51 respectively. PW.53 speaks to the seizure of the material objects from the spot and arrest of accused Nos. 9 to 11.

27. Thus the various inquest panchanamas and the material objects go to corroborate the testimony of the eye witnesses in every respect.

28. The arrest of accused persons is spoken to by the persons mentioned above. The seizure of the weapons is also placed on record through the testimony of PWs.50, 51, 53 to 55 - police officers.

29. The evidence of material witnesses in particular eye witnesses supported by the evidence of doctor and the witnesses are various inquest panchanamas, seizure panchanamas and arrest of the accused persons coupled with the evidence of Investigating Officers go to establish that the testimony of the eye witnesses has been fully supported by the other evidence placed on record by the prosecution. As such, we see no reason to disbelieve the testimony of the eye witnesses in particular when they have spoken in detail about the role played by the accused persons during the incident in question. The motive part of the case is also spoken to by the eye witnesses and (sic) also supported by the other (sic) witnesses and the deceased - Channabasappa having enmity with accused - Amogy is spoken to by PWs.18, 20, 30 and 40 and the fact that Amogy was assaulted on the same day in the morning by Channabasappa group and accused No. 11 going to the police station and lodging of the complaint in this regard is also placed on record and in this connection, the evidence of PW.8 throws the light on this aspect Exs.D3 and D10, which have been marked in the course of examination on behalf of defence, also go to indicate that a case in Crime No. 133/1991 was registered against Channabasappa. Thus though motive part in the instant case may not assume much importance having regard to the fact that there are as many as 17(sic) witnesses to the incident in question, Nevertheless the motive factor also has been proved in the instant case by the prosecution.

30. Now we would like to refer to the contentions urged before us by the learned Counsel for the respondents and also would like to deal with the trial court's reasonings for not accepting the testimony of the eye witnesses.

31. The first contention raised is that the original complaint was suppressed and Ex.P1 came to be recorded much later and therefore, there is every possibility of deliberation and concoction preceding Ex.P1. No doubt, in the evidence of police officers, accused No. 11 went to the police station and lodged the complaint concerning the a case was registered Crime No. 133/1991. The evidence of PW.40 is also supported by the testimony of other police officers that is PWs.30, 36, 37, 39, 43 and 48. Ex.P1 - complaint in the instant case was given by PW.1 and this was sent to the police station for registration in Crime No. 134/1991 as per Ex.P39. FIR was sent to the court and it reached the court at 12.30 p.m. The

incident took place in the morning around at 7.00 a.m. and Ex.P1 - complaint came to be lodged at 10.00 a.m. and FIR (sic) reached the learned Magistrate at 12.30 p.m. on the same day. Therefore, absolutely there is no delay either in lodging of Ex.P1 - complaint or it reached the court. No doubt, it has come in the evidence of police officers that one person came and informed about the fire incident and this is spoken to by PWs.36, 37, 38 and 42. Merely because the information to the police (sic) that the fire occurred at the house of Channabasappa, that itself does not give a clear picture to the police about the incident and who are all the accused persons involved in the act of setting fire and, therefore, when the police officials after receiving the said information and went to the spot and thereafter recorded the complaint of PW.1, it cannot be said that there is suppression of original complaint. It is settled law that cryptic information given to the police either in the form of telephonic message or telegram or just saying that the house of Channabasappa was put fire itself cannot be sufficient for the police to register the case and therefore when the police go to the spot to get more information before registering the case, the said act on the part of the police cannot be construed as an act of suppressing the original complaint. At the most not registering the case soon after coming to know of the incident may be an act of negligence on the part of the police officers concerned. Therefore the trial court's reasoning that the complaint lodged by some persons at the police station or that someone informed the police about the incident or for that matter PW.23 informed the police itself cannot give room to hold that there was suppression of original complaint. Therefore, the said view according to us is also against the well settled position in law as has been laid down by the Apex Court. Hence, the question of the original complaint being suppressed or there being any deliberation or concoction taking place does not appear to us as having any force behind it.

32. The next contention put forward before us by the learned Counsel for the respondents is that the presence of some of the accused persons as spoken by the eye witnesses cannot be believed and, in this connection, we were taken through Ex.P3 - complaint, which is lodged by accused No. 11, and Ex.D10, which is the inquest panchanama held in connection with the death of Amogy following the assault on him. So far as the absence of accused Nos. 9, 11, 18, 20, 21 and 23 is concerned, the evidence on record does not indicate that these persons were not present at the time of the incident of setting the house of Channabasappa on fire.

33. So far as Ex.D10 - inquest panchanama held in connection with the death of Amogy is concerned, it is pointed out by the learned Additional State Public Prosecutor that the persons, who accompanied the injured to the hospital, were Kasturavva, Jagadev, Channabasu and Chidananda. PW.52 has stated in his evidence that deceased - Amogy was accompanied to the hospital by his wife and 2 or 3 women folk and nobody else. In fact, this witness has stated in his cross-examination that no male members were to the jeep when Amogy was taken to the hospital. Therefore, from the above evidence on record, the

possibility of accused Nos. 9, 11, 18, 20 and 21 accompanying with Amogy to the hospital has to be ruled y out. This conclusion of ours is reinforced by another important circumstance, that is, all the eye witnesses examined in the instant case have deposed positively about the presence of these accused persons during the incident in question and not even a suggestion was put to any of the eye witnesses including PW.1 that accused Nos. 9, 11, 18, 20 and 21 were not present and that they accompanied Amogy to the hospital. We are convinced to observe that the defence has not been able to establish this contention by effectively cross-examining the eye witnesses in this regard.

34. So far as the reply given by accused Nos. 9, 11, 18, 20 and 21 in 313 statement is concerned, no doubt these accused persons have stated that they had accompanied with Amogy to the hospital. The statement of accused No. 19 has been adopted by accused No. 9 and 11 and likewise accused No. 23 has adopted the statement of accused No. 9 and 11. Therefore, it was argued that the reply given in 313 statement has to be construed as evidence.

35. So far as the position in law is concered, it is well settled that the statement recorded u/s 313 of the Cr.PC is no evidence and though it is not substantive evidence, it can be taken into consideration when judging the prosecution as well as defence evidence. It is well settled that the statement of the accused may only be taken into consideration so far as the enquiry or trial in which the statement is made is conerned, and a statement made under this Section does not take the place of evidence. This is the observation made by the Apex Court in the case of Vijendrajit Ayodhya Prasad Goel Vs. State of Bombay, . That apart, it has also been held in another case reported in 1968 (1) SC 312 that it is only where the accused gives evidence u/s 315 of Cr.PC that his statement can be read as evidence proper. Therefore, the position in law is that the statement of accused is a matter to be considered by the court alongwith other evidence on record and his version should be accepted if it could be reasonable or unless the prosecution proved beyond reasonable doubt.

36. In the instant case, we find that there is evidence placed by the prosecution through the testimony of number of eye witnesses to show the presence of these accused persons during the incident in question. In fact, all the eye witnesses have spoken consistently that accused No. 9 was on the top of the house of Channabasappa and set fire by throwing fire balls and another accused person - Sidharth also joined in the acts and rest of the accused persons helped in the incident. Therefore, we do not find any force in the submission made in this regard and at the same time, for the very same reason, we also do not find any justification in the trial court also taking the similar view as contended before us by the learned Counsel for the respondents. The said conclusion of the trial court has led to discarding the evidence of eye witnesses. In our view, it is established that the presence of the accused persons has been spoken consistently by the eye witnesses and their absence at the spot not being established by placing either defence evidence or effectively cross-examining the eye witnesses on this

aspect, the trial court could not have discarded the entire evidence of eye witnesses in toto.

37. The trial court also found discrepancies, omissions and contradictions in the testimony of eye witnesses when compared to the evidence of PW.55. In this connection, we would like to refer to the observations made by the Apex Court with regard to appreciating the evidence of the eye witnesses. In the case of *State of Karnataka v. Papanaiika and Ors.* reported in 2005 SCC (Cri) 104. The Apex Court has observed thus:

It is common experience that sometimes witnesses are prone to lapse of memory and sometimes they overstate the facts but simply because the statements of the witnesses are partly not trustworthy that does not mean that the whole of the testimony of the witnesses should be discarded. Criminal courts while appreciating testimony of witnesses should not take easy approach. Some exaggeration or embellishment can appear in the testimony because of lapse of time or poor memory. Therefore, wherever courts find sufficient corroboration then testimony of such witnesses should be accepted.

38. It is also settled law that undue importance cannot be given to 161 statement, but at the most it can be made use of to contradict the testimony of the witnesses and some exaggeration or minor discrepancies in the testimony of the eye witnesses will not be fatal to the prosecution case.

39. The trial court has also discarded the evidence of eye witnesses on one more ground, that is, with reference to the conduct of the deceased persons as well as the eye witnesses. So far as the trial court's reasonings in this regard is concerned, we are at a loss to understand as to how one could expect the deceased persons, who were caught inside the house and when the house was burning and the house being surrounded by the accused with weapons in their hands, to come out and such an act can only be expected in reel life, but not in the real life. The trial court has observed that even the eye witnesses could be prevented the incident in question, and they did not stop the accused persons in committing the act. This reasoning of the trial court is also unsound and is not based on proper scrutiny of the evidence on record. The eye witnesses have spoken to the effect that the accused threatened them with dire consequence and the accused were found armed and such being the case, no person would take risk to rescue the persons caught inside the burning house. Even with regard to character or conduct of the witnesses is concerned, undue importance cannot be given, if the evidence of such witnesses finds corroboration in material particulars from the evidence of other witnesses. When the presence of witnesses is not doubted, their evidence requires to be accepted. This is the position in law as has been laid down by the Apex Court in the case reported in 2005 SCC (Cri) (51).

40. If we closely scrutinise the evidence of eye witnesses in the light of the above position in law with regard to the appreciation of evidence, we do not find

any infirmity in the prosecution case and all the defects referred to by the learned trial judge in the course of his discussion of the evidence as well as the conclusions drawn are contrary to the well established principles of law and as such, they have to be rejected and accordingly we reject the conclusions of the trial mentioned at paragraph No. 225.

41. Certain lapses in the investigation has also been brought to our notice in the course of the submission made by the learned Counsel for the respondents and the trial court has also noted these lapses to which we already made reference above. These lapses, with regard to arrest of the accused and the seizure of the material objects cannot be given undue importance. The Apex Court in the case reported in 2004 SCC (Cri.) 851 has observed as thus:

Criminal Procedure Code, 1973 - Sections. 157, 160 to 168 - Investigation -- Defective investigation - Effect of - Not fatal to prosecution where ocular testimony is found credible and cogent - Court has to be circumspect while evaluating the evidence in a case of such type - Thus, accused cannot be acquitted solely on account of defect in investigation - Evidence Act, 1872 - Section 45 - Non-sending of bloodstained earth for chemical examination and weapons of assault and pellets for ballistic examination - On facts, held, not fatal - Criminal Trial Infirmities/Lapses/Omissions - Defective investigation - Effect - Penal Code, 1860 - Sections 302/34.

Therefore, the investigation lapses in the instant case are not so serious enough to discard the trustworthy testimony of all the eye witnesses and hence, the trial court could not have given much importance with regard to the lapses in investigation, Therefore, we reject the said finding of the trial court also.

42. Thus on a close scrutiny of the entire evidence on record, having regard to the fact that there was faction between deceased and the accused, we are of the firm opinion that the testimony of the eye witnesses deserves to be accepted as reliable and trustworthy. As many as 17 witnesses have given evidence against the accused persons and when there are two factions in the village the question of these witnesses trying to depose falsely against the accused persons or making false implications will not arise. As such, the judgment and order of acquittal passed by the trial court requires to be interfered by us in this appeal as in our view, the trial court's reasoning is not in accordance with the well established principles of law and consequently when the material evidence on record has been ignored and more particularly, the entire evidence of the eye witnesses has been discarded in one go, the said approach of the trial Court has led to, in our opinion, to a totally perverse finding and unjust acquittal of the accused persons. Hence, there are compelling reasons made out by the State, for us to interfere in this appeal.

43. One more aspect that requires to be referred to before proceeding further is with regard to application of Section 149 of the IPC to the case on hand. The evidence of all the eye witnesses and other witnesses, who supported the eye

witnesses, would go to indicate that all the accused persons, who are respondents before us, have taken part in the incident of setting the house of Chennabasappa on fire. The role played by all the accused persons has already been referred to by us by referring to the evidence on record through the chart, which was submitted by the learned Counsel for the respondents. The entire operation was carried out by accused - Anand and Sidharth and rest of the accused also jointed hands and no one made any attempt to prevent the holocaust taking place. Thus all the accused persons with the common object of putting an end to the life of 10 persons committed the act in question. Therefore, in our view, each accused person becomes liable for the act in question. In this connection, we would like to place reliance on the decision of the Apex Court reported in 2005 SCC (Cri.) 1230. In the said case, the Apex Court has observed that even if no part is played, mere presence is sufficient to attract Section 149 of the IPC. The relevant observation is as under:

9. Section 149 IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object, IN order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was a member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall u/s 149, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard-and-fast rule can be laid down under the circumstances from which the common object can culled out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at the time of or before or after the occurrence. The word "knew" used in the second limb of the section implies something more than a possibility and it cannot be made to bear the sense of "might have been known". Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the

members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within the first part; but offences committed in prosecution of the common object would be generally, if not always, be within the second part, namely, offences which the parties knew to be likely to be committed in the prosecution of the common object. (See Chikkarange Gowda v. State of Mysore.)

The above position in law is also to be found reiterated in a case reported in 2005 SCC (Cri.) 1676.

44. Having regard to the above proposition of law with regard to Section 149 of the I.P.C., in the instant case, since the eye-witnesses have spoken about the role of the accused including A-11, we are of the view that all the accused will be liable to be convicted for causing the death of ten persons and, therefore, Section 149 of the I.P.C. will be applicable to all the accused. So far as the role of A-11 is concerned, although the learned amicus curiae for the respondents drew our attention to Ex.D-3, the complaint given by A-11, and the evidence of P.W.8, all that we notice from that is that the complaint was given by A-11 at 8.00 am. on 5.10.1991 as per Ex.D-3 at Chadachana Police Station, whereas the present incident took place in the early morning as per the say of all the witnesses i.e., around 7.00 a.m. Admittedly, the incident took place at 7.00 a.m. on 5.10.1991 and hence, when all the eye-witnesses have spoken about the presence of all the accused, and more particularly the presence and the overt acts of A-11 being spoken to by as many as six eye-witnesses i.e., P.Ws.1, 3, 4, 6, 9 and 10 to the effect that A-11 gave instigation to the other accused to set fire to the house of deceased Channabasappa, the presence of A-11 is also established by the prosecution and there is no positive evidence placed by A-11 to disprove this and more importantly, not even a suggestion has been put to any of the eye-witnesses that A-11 was not present during the incident in question and that, at that point of time, A-11 was at the Police Station. Therefore, we do not find any force in the submission made in regard to A-11 being not present at the time of the incident and the testimony of the eye-witnesses cannot be discarded merely (sic) on the basis of the conjectures and surmises. As a matter of fact, it was A-11 who started the initial instigation, which led the other accused to set the houses on fire. Hence, we are of the view that all the accused persons will be liable with the aid of Section 149 of the I.P.C. for all the offences with which they stand charged. In other words, the prosecution has established the commission of all the offences punishable under Sections 148, 302, 506, 342, 436 read with 149 of the I.P.C.

45. We have heard the learned Counsel for the parties on the question of sentence. The learned State Counsel Sri B.V. Pinto submits that having regard to the ghastly act committed by the accused and in view of the offences under both the Sections 302 and 436 of the I.P.C being punishable with life imprisonment, the accused persons be dealt with severely for the manner in which they have caused the death of ten persons. On the other hand, the learned amicus curiae

appearing for the respondents Sri C.H. Jadhav as well as Sri Mallikarjun S. Masali submitted that there is a long gap between the date of incident and the disposal of the appeal today and the accused had the benefit of acquittal all these years and this fact may be taken note of while considering the sentence to be imposed.

46. No doubt, there is a long time gap between the date of incident and as of now. This factor could have been a relevant one if the accused were to be punished for a lesser offence than the one u/s 302 of the I.P.C. This Court could have reduced the sentence having regard to the long time gap but, as the offences charged and proved by the prosecution includes Section 302 as well as Section 436 of the I.P.C. both of which are independently punishable with life imprisonment, we are not inclined to accept the submission made in this regard by the learned amicus curiae for the respondents. Moreover, with regard to the sentencing is concerned, the Apex Court has observed that the sentence to be imposed should respond to the society's cry for justice and the observations made in this regard are to be found in the decision of the Apex Court in the case of *State of Madhya Pradesh v. Saleem @ Chamaru* reported in AIR 2005 SCW 3511 at paragraphs-8 and 10, wherein it is observed thus:

8. The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

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10. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal".

47. Having regard to the above settled position in law and taking note of the fact that the accused set fire to the houses of Channabasappa as well as teacher Pavithrabai because of the earlier incident on the same day, in which Amogi was said to have been assaulted by deceased Channabasappa's party, this is not a case coming under the rarest of rare cases category and, as such, the only alternative is to impose imprisonment for life on all the accused persons for the offences punishable u/s 302 and ten years fine for the offence punishable u/s 436 of the I.P.C. and for the rest of the offences, though proved and though (sic) convicted, we do not propose to award any separate sentences for the said offences.

48. In the result, we proceed to pass the following order:

- 1) Both the State appeals are allowed.
- 2) The impugned judgments and orders of acquittal passed by the trial court dated 30.11.1998 and 30.4.1999 in both the appeals are hereby set aside.
- 3) All the respondents in both the appeals viz., Ramappa Bhimappa Kattimani, Janabai, Yallawwa, Mudakawa @ Muktabai, Husanavva, Padma, Subhadra, Anand Amogi Kambale, Mallappa Bhimanna Kattimani, Dandappa Geneppa Kattimani, Tukaram Pundalik Kattimani, Sidram Mallappa Kattimani, Nimbewwa, Vimalabai, Sukhdev Bhimanna Kattimani, Shrishail Bhimanna Kattimani, Siddarth @ Siddappa Kallappa Kattimani, Laxman Bhimanna Kattimani, Abhimanyu Kallappa Kattimani, Chanabasu Geneppa Kattimani, Sidraya Laxman Kattimani, Vimalabai, and Chikkappa Laxman Kattimani in CrI.A. No. 276/1999, and Buddappa in CrI.A. No. 1201/1999 are convicted for the offences punishable under Sections 148, 302, 506, 342 and 436 read with 149 of the I.P.C.
- 4) Each one of the above respondents is sentenced to undergo imprisonment for life for the offence punishable u/s 302 of the I.P.C. and each one of them is also liable to pay fine of Rs. 5,000/- and in default of payment of fine, to undergo further R.I. for a period of two years.

The fine amount, if collected, shall be distributed equally among the legal heirs of the respective deceased persons.
- 5) For the offence punishable u/s 436 of the I.P.C., each one of the above named respondents is sentenced to undergo imprisonment for a period of ten years and shall also be liable to pay fine of Rs. 5,000/- and in default of the fine amount being paid by them, to undergo further R.I. for a period of one year.

If the fine amount is collected, the same shall be distributed equally between the heirs of deceased Channabasappa and Pavithrabai.
- 6) However, we do not propose to impose any sentence on each of the respondents herein for the rest of the offences, which have been proved against them.
- 7) The substantial sentences imposed as above shall run concurrently.
- 8) All the respondents herein shall also be entitled to set off as per Section 428 of the Cr.P.C.

All the respondents above named shall forthwith surrender before the trial court to undergo the sentences upon them by us and if they fail to do so, the trial court shall take necessary and immediate steps to secure the presence of the respondents herein in order to serve out the sentences imposed upon them by us as above.

Sri C.H. Jadhav and Sri Mallikarjun S. Masali have ably assisted us as amicus curiae and we also place on record their assistance particularly in placing on record the chart, which (we have incorporated in the judgment itself,) has given

us able assistance in appreciating the evidence on record in proper perspective. Hence, we place on record our appreciation for the valuable services rendered by both of them and we fix the fee of Sri C.H. Jadhav at Rs. 5,000/- and the fee of Sri Mallikarjun S. Masali at Rs. 3,000/- and we direct the Registry to make necessary arrangement to pay the said fee to the learned Counsel at the earliest.

A copy of the judgment shall be forthwith sent to the trial court for compliance.

It is ordered accordingly.