

JUDGMENT:- (per Hon'ble Sri Justice K.C.Bhanu) This Criminal Appeal, under Section 378 (3) & (1) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 06.11.2012, in Sessions Case No.207 of 2009 on the file of the II Additional Sessions Judge, Kurnool at Adoni by the State whereunder and whereby, the respondents herein/A-1 to A-4 were acquitted of the offences punishable under Sections 324, 506 and 302 read with 34 of the Indian Penal Code, 1860 (for short, "I.P.C."). 2. Case of the prosecution, in brief, may be stated as follows: One Boya Dodla Chennaiah (hereinafter, referred to as 'the deceased') is the elder brother of P.W.1. The accused used to sell I.D. arrack in the village. The deceased used to question the accused and obstruct their business. So, the accused bore grudge against the deceased. On 20.3.2008, at about 5 p.m., while P.W.1 was proceeding to Urukonda to attend calls of nature, he noticed the deceased going along with Mahanandi and Venkatesh towards Vengalayadoddi tank to see the fish seed being grown in the tank. On the way, A-1 to A-4 formed into a group and attacked the deceased with a common intention to kill him. In pursuance of their common intention, all the accused attacked the deceased and caused multiple injuries as a result, the deceased fell down on the ground and succumbed to the injuries. The persons present there including P.W.1 tried to catch hold of the accused, but they could not do so, as A-4 beat P.W.3 with a stick on his right hand and threatened P.W.1 with dire consequences. P.W.1 later went to Aspari Police Station and lodged Ex.P-1 - complaint. Police registered a case in Crime No.17 of 2008 for the offences punishable under Sections 323, 506 and 302 read with 34 I.P.C. against the accused. During the course of investigation, the Investigating Officer conducted inquest over the dead body of the deceased in the presence of two witnesses. The mediators opined that the deceased died as a result of multiple injuries. After inquest, the dead body was subjected to post mortem examination. The Doctor, who conducted autopsy over the dead body of the deceased, opined that the deceased appeared to have died of Asphyxia due to lacerations. On 29.3.2008, the Inspector of Police arrested A-1 to A-4 at Preethi Hotel at Billekal Village and in pursuance of their confession statement, they have taken the Investigating Officer to Thallibanda hillock near Karumanchi Village where they concealed the weapons used in the commission of the offence. The Investigating Officer seized those weapons under cover of a panchanama in the presence of two witnesses and after completion of investigation, the police filed the charge sheet. 3. After committal, the learned Sessions Judge framed charges for the offences punishable under Sections 324, 506 and 302 read with 34 I.P.C. 4. When the above charges were read over and explained to the accused in Telugu, they pleaded not guilty and claimed to be tried. 5. To substantiate the charges, prosecution examined P.Ws.1 to 15 and got marked Exs.P-1 to P-20. 6. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of prosecution witnesses. They denied the same. On behalf of the accused, none was examined and no document was got marked. 7. Considering the evidence on record, the learned Sessions Judge acquitted the accused giving benefit of doubt. Challenging the same, the present appeal is preferred by the State. 8. The points for determination are: "Whether the prosecution proved its case beyond all reasonable doubt for the charges under Sections 324, 506 and 302 read with 34 I.P.C. against the accused and whether there are compelling and substantial reasons to interfere with the judgment under challenge or not?" 9. POINTS:- Learned Public Prosecutor appearing for the appellant/State contended that P.W.1 is the eye witness to the incident and there is no other reason for him to implicate the accused falsely in this case leaving the real assailants; that the presence of P.W.1 at the time of the incident is found to be probable and natural and his evidence is in corroboration with the evidence of P.Ws.4 to 6; that the medical evidence would clearly go to show that the death of deceased is homicidal because of multiple laceration injuries all over the body of the deceased and therefore, he prays to set aside the order of acquittal and convict the accused. 10. There is a presumption under law that the accused is presumed to be innocent unless case of the prosecution is established beyond reasonable doubt. That presumption is further strengthened by the order of acquittal passed by the trial Court. In an appeal against the order of acquittal, ordinarily, this Court would not interfere with the findings of the trial Court unless the findings are perverse or not based upon any admissible evidence, as the presumption of innocence of the accused is fortified by the order of acquittal. As held in a decision reported in SIDHARTHA VASHISHT @ MANU SHARMA VS. STATE (NCT OF DELHI), the following principles have to be kept in mind by the appellate Court while dealing with the appeals particularly, against the order of acquittal: (i) There is no limitation on the part of the Appellate Court to review the evidence upon which the order of acquittal is found. (ii) The Appellate Court in an appeal against acquittal can review the entire evidence and come to its own conclusions. (iii) The Appellate Court can also review the Trial Court's conclusion with respect to both facts and law. (iv) While dealing with the appeal preferred by the State, it is the duty of the Appellate Court to marshal the entire evidence on record and by giving cogent and adequate reasons set aside the judgment of acquittal. (v) An order of acquittal is to be interfered only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. (vi) While sitting in judgment over an acquittal the Appellate Court is first required to seek an answer to the question whether finding of the Trial Court are palpably wrong, manifestly, erroneous or demonstrably unsustainable. If the Appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the Appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can reappraise the evidence to arrive at its own conclusion. (vii) When the Trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of Ballistic Experts etc., the Appellate Court is competent to reverse the decision of the Trial Court depending on the materials placed. Keeping the above principles in mind, it has to be seen as to whether there are any compelling or substantial reasons to interfere with the order of acquittal or not. 11. The death of the deceased is not in dispute. The deceased died as a result of multiple injuries all over his body. P.W.12 is the Doctor who conducted autopsy over the dead body of the deceased and issued Ex.P-11 – post mortem certificate. The evidence of P.W.12 coupled with his opinion in Ex.P-11 would clearly go to show that the deceased died as a result of laceration injuries all over his body. Similarly, the inquest mediators held inquest over the dead body of the deceased under Exs.P-5 and Ex.P-6, which would clearly go to show that the inquest mediators opined that the deceased died as a result of injuries sustained by him. From the aforesaid evidence, homicidal nature of death of the deceased is established. 12. The entire case rests upon the evidence of P.W.1. When a case rests upon a solitary eye witness and if it is unimpeachable, true and trustworthy i.e., if the evidence of a solitary witness is put in the category of wholly reliable, then, there is no difficulty in accepting his evidence. 13. P.W.1 is no other than the brother of the deceased. He is running a kirana shop. According to him, on the fateful day, while he was going towards Urukonda to attend calls of nature, he saw his elder brother – deceased and P.Ws.2 and 3 going ahead of him and at that time, all the accused formed into a group and with a common intention, attacked the deceased and caused injuries. 14. P.Ws.2 and 3 did not support the case of the prosecution. Except marking their earlier statements recorded by the police during the course of investigation under Section 161 (3) Cr.P.C. as Exs.P-2 and P-3, nothing has been elicited from them so as to use their evidence for corroboration. According to P.W.1, he saw the accused attacking his brother from a distance of 10 feet. He neither raised any cries, tried to intervene nor requested the accused not to attack the deceased. He appears to be a chance witness. His presence at the scene of occurrence is doubtful. His behaviour and conduct at the time of incident is not like that of a prudent person. The deceased was having number of enemies in the village. He was a life convict in his grandfather's murder case, but was released on parole. In another murder case also, the deceased was a prime accused and was convicted to undergo life imprisonment. One month prior to the incident also, the deceased was assaulted by one Sreeramulu in connection with arrack dispute. When he was released from jail, the supporters of one Bojjappa attacked the deceased, but he could escape luckily. So, from the material evidence on record, it is clear that there were so many enemies to the deceased in the village. 15. Though some incriminating weapons have been seized from the possession of the accused, neither they were produced before the Magistrate concerned nor were confronted to the Doctor to depose as to whether those weapons could cause the injuries noticed by him in the post mortem certificate or not. Similarly, the mediators, who were present at the time of the arrest of the accused, did not support the case of the prosecution. For all these reasons, the trial Court has not placed any implicit reliance on the evidence of P.W.1. The evidence of P.W.1 could not inspire the confidence of the Court so as to arrive at a conclusion that the accused are the assailants of the deceased. Therefore, in the circumstances of the case, P.W.1 is neither wholly reliable nor wholly unreliable. In such circumstances, the evidence of P.W.1 requires corroboration. There is absolutely no corroboration for the

