

HON'BLE SRI JUSTICE G.CHANDRAIAH

AND

HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRL.A.NO.1479 OF 2010

AND

CRL.A.NO.517 OF 2013

COMMON JUDGMENT: (Per Hon'ble Sri Justice G.Chandraiah)

These two criminal appeals are being disposed of by this common judgment since Crl.A.No.517 of 2013 filed by A-1 and Crl.A.No.1479 of 2010 filed by A-2 are directed against the very same judgment of the learned II-Additional Metropolitan Sessions Judge, Hyderabad, in Sessions Case No.288 of 2009 dated 15.11.2010, whereby the appellants-A1 and A-2 were convicted and sentenced to undergo rigorous imprisonment for a period of one month each for the offence under Section 341 read with Section 34 I.P.C.; rigorous imprisonment for life and to pay a fine of Rs.500/- each; in default to undergo simple imprisonment for one month each for the offence under Section 302 read with Section 34 I.P.C. and that the appellant-A1 was further convicted and sentenced to undergo rigorous imprisonment for a period of two years for the offence under Section 379 I.P.C., directing that the sentences imposed against them shall run concurrently.

2. The case of the prosecution, in brief, is that on 30.04.2008 at about 11.00 P.M., when one Pavan Subba (hereinafter referred to as 'the deceased') and P.W.3 left their work place on their respective cycles to reach their rooms and when they were passing through Andhra Bank lane, Vijaynagar colony, A-1 chased them stating "thief thief" and thereafter A-1 caught hold the deceased, while P.W.3 ran away. Subsequently, A-1 took the deceased to Konadaiah daba, Kotamma basti, where A-2 and one Tirumala Rao (Juvenile delinquent) were present and they started beating the deceased stating that he was a thief and when the deceased tried to run away, A-1 to A-3 chased him and beat him mercilessly and A-1 kicked him and thrown him on a sharp iron grill fencing and

pressed him, as a result of which, the deceased sustained bleeding injuries. Thereafter, P.W.1/Police Constable, who was on patrolling duty in Vijayanagar colony, on receipt of VHF set message, went to the spot and found the deceased lying on the ground with bleeding injuries on the neck and also on the other parts of the body and later the Emergency Medical Technician, who was present in the 108 vehicle declared him as dead. Subsequently, P.W.1-Police Constable lodged Ex.P1-complaint on 30.04.2008 at 11.45 P.M. before P.W.8-Head Constable, who registered the same as a case in Crime NO.220 of 2008 under Section 302 I.P.C. Thereafter, P.W.9-Inspector of Police took up investigation.

3 . After taking cognizance for the offences, copies were furnished to the accused and the case was committed to the Court of Sessions and was made over to the II Additional Metropolitan Sessions Judge, Hyderabad.

4. The prosecution in order to prove the guilt of the appellants examined PWs.1 to 10 and got marked Exs.P.1 to P.12 and MOs 1 to 4 before the trial Court. On behalf of the appellants no oral or documentary evidence was adduced.

5. After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C. and they denied the incriminating evidence. No defence is produced.

6. The learned trial Court framed the following points:

1. Whether the prosecution could prove the guilt of the accused for the offences under Sections 341, 302 read with 34 IPC against A.1 and A.2 and under Section 379 IPC against A1 beyond all reasonable doubt?
2. Whether the accused Nos.1 and 2 are liable to be convicted?

7. Based on the evidence, the trial Court convicted and sentenced the accused

as stated supra. Challenging the same, the present criminal appeals are filed.

8. Learned Counsel appearing for the appellants, at the outset, submits that the prosecution has failed to prove the guilt of the accused, but the learned trial Court only basing on evidence of PW.4 which is corroborated with the evidence of PW.3 held the guilt of the accused proved beyond reasonable doubt. Absolutely, there is no motive, whatsoever, for the accused to beat the deceased resulting in his death. The trial Court erroneously came to the conclusion that PW.4 is a trust worthy witness. He also submitted that PW.4 was on the terrace which is on the 2nd floor of the building at about 11.30 PM and the incident took place on the road side about 50 to 60 meters away from the place where he was. Therefore, it was not even possible for him to see at all. Further, learned counsel for the appellants submitted that there is a material discrepancy between the testimony of witnesses and the medical evidence on record. PW.10, who is a doctor conducted autopsy over the dead body, and found as many as 8 anti-mortem three stab injuries on the body of the deceased. The inquest report reveals that the injuries were caused due to iron fencing and that the deceased died due to excess bleeding. The postmortem report is contrary to the nature of the injuries sustained by the deceased. In such a situation the evidence of the postmortem report is to prevail over the oral evidence. As per the postmortem report the following injuries were found:-

1) Stab injury of 2 cm x 0.75 cm x neck deep, present transversely placed over left side of the neck, 10 cm from left ear lobe mid left mandibular line, the stab injuries done the sternode (N.C) musculum, and also cut done left side ventry and left common-carotid arteries and terminated at (N.C) spine.

2) Stab injury of 2 cm x 1cm x muscle deep, obliquely placed on right fore arm.

3) Stab injury of 2 cm x 2 cm x muscle deep or left delford region.

4) Stab injury of 2 cm x 2 cm, 3 cm medial to injury No.(3)

5) Stab injury of 2 cm x 2 cm, 3 cm below the injury No.(3)

6) Cut injury of 3 ½ cm x 3 cm x muscle deep, 1 cm lateral to injury (5)

7) Contusion of scalp 3 cm x 2 cm on left frontal region.

8) Contusion of 3 cm x 2 cm present on left (N.C) of left hand.

9) The stab region are fresh and spindle shaped with clear (N.C) margins.

The prosecution case is that the appellants and A3 hit the deceased with hands and stick.

9. Learned counsel for the appellants relied on the judgment of the Division Bench of this Court in **Marella Chalama Reddy and others v. State of A.P., rep.by Public Prosecutor, High Court of A.P., Hyderabad**, wherein it was held as follows:

“PW-8- the doctor, who conducted postmortem examination over the bodies of deceased 1 and 2 stated in the cross examination that lacerated injuries would be caused with blunt object, there is no injury at all on the neck of D1, there is no stab injury on the face of D1, and that cut injury would be with a sharp object and that he did not find any cut injury on D1. He also further stated in the cross examination that there was no injury on the neck of D2 and there were no hack or cut injuries on the head of D2.”

Learned counsel also relied on the judgment in **Ramsewak and others v State of M.P.**, wherein, it was held as follows:

“We, having heard the arguments of learned counsel for the parties and perused the records, are inclined to agree with the findings of the trial court rather than that of the High Court. Though the finding of the trial court that PW-1 should be treated as a chance witness, in our opinion, cannot be correct because it is quite often the normal practice in the village that when a member of the family takes the cattle for grazing, somebody else carries the lunch for that person therefore, it cannot be said with certainty that PW-1 was a chance witness. However, other circumstances make us agree with the trial court that this witness might not have seen the incident at all. It is to be noted that in the complaint it was stated that he went to Itayali to meet Moti Ram Kachhi, but he could not meet him hence he came back to Bhadera. Most likely finding it difficult to convince the court the reason why he went to Itayali and came back just in time to witness the incident, he improved his evidence when he stated before the court that he went to Itayali because the deceased had asked him to go there and call Moti Ram Kachhi which was not the case in the complaint. Be that as it may, the fact remains his going to

Itayali which accounts for the purpose of timing is not established because said Moti Ram was never contacted nor this part of the evidence of PW-1 is corroborated from any other source. This is a vital piece of link evidence which is missing from the prosecution case and creates a doubt why PW-1 stayed back in the grazing field for nearly two hours after serving lunch to his uncle. Therefore, the trial court was justified in drawing an adverse inference in regard to the possible presence of PW-1 at the time of the incident. Then again we notice that this witness when he saw the accused persons heading towards his uncle, allegedly got scared and hid behind a tree but he also says that he had seen his father and uncle in the neighbouring field but he did not make any attempt to join them. This is an unusual conduct because even according to PW-1, the accused persons did not attempt to threaten him or his father PW-2 and uncle PW-6 even though they intervened in the fight which makes the presence of PWs.1 and 2 doubtful. As noticed by the trial court, we also see that there are material contradictions between the evidence of these witnesses and the medical evidence which also adds to the bundle of suspicions as to the presence of this witness.

The learned counsel for the State of M.P., however, contended that what was stated in the said part of the evidence of PW-1, was referable to the inquest report and not the FIR. We have examined the original which is in Hindi and the translation is admittedly correct. A reading of this part of the evidence shows that this witness was speaking about 2 reports. The first report which he refers to must be in regard to the inquest in regard to which he says that he does not remember if the Police took his signatures after the spot inspection. The latter part of the evidence certainly refers to his complaint which he in specific terms states was written on the spot only. Even assuming that there is some doubt as to the interpretation of this part of his evidence since the same is not clarified by the prosecution by way of reexamination, the benefit of doubt should go to the defence which has in specific terms taken a stand that the FIR came into being only after the dead body was recovered. We also notice that there is considerable doubt in regard to the place of incident also. From the medical evidence we notice that the deceased suffered 3 major incised wounds leading to the severance of the blood vessels and amputation of his hand near the wrist and the body in question was lying at the spot till the Police came which was nearly 4 to 5 hours later but still the investigating agency was unable to find any blood on the spot. Of course, the prosecution has given an explanation that after the incident in question it had rained but even then it is difficult to believe even traces of blood could not have been found on the soil inspite of the rain. The absence of any such material also supports the prosecution case that the incident in question might not have happened at the place of incident. In the background of these deficiencies in the prosecution case, we think the trial court was justified in coming to the conclusion that the prosecution has not established its case hence the trial court was justified in acquitting all the accused persons. Consequently, we are of the opinion that the High Court was not justified in taking a contrary view.”

He also relied on the judgment of the Supreme Court in **A.Shankar v. State of Karnataka**, wherein it was held as follows:

"9) Stab incised wound present over left side back of chest situated 12 cms below the level of 7th cervicle spine 5 cms to left of midline measuring 3 cms x 1.5 cms chest cavity deep.

The post mortem report further revealed that so far as injury no.9 was concerned, the weapon had cut the skin and muscles of chest had entered the chest cavity in 5th intercostals space, and pierced the lower lobe of left lung on which it measures 2 cms x 0.5 cms x 0.5 cms deep. According to the opinion of the Doctor, the death was due to shock and haemorrhage as a result of the aforesaid injuries.

12. Material Contradictions:

(I) Evidence of Witnesses:

Murthyalappa (PW.2), and Smt. Ramanjanamma (PW.3), the brother-in-law and sister of the deceased, respectively, deposed in the Court that they made a visit to the hospital where Shankara (PW.8) had been admitted and he had told to both of them that the appellant had killed Murthy Prasad, and caused injuries to him. Though Shankara (PW.8) complainant himself deposed in his examination-in- chief that he came to know about the death of his brother only after being discharged from the hospital living therein as indoor patient for 15 days.

Shankara (PW.8), while lodging the complaint stated as under: "On 25.3.1996 at about 8.00 P.M. the accused younger brother of Rudresh came to the Super Hair Style Shop of the deceased, elder brother of the complainant viz., Murthy Prasad and demanded Rs.150/- from him.

Since he did not give the money demanded, the accused got angry and threatened that he would take care of him later. He once again came back at 9.30 P.M. to the shop of the complainant and with intent to murder the complainant and his elder brother, he sought shelter in the shop, had food and slept there itself."

But, in the court Shankara (PW.8) deposed:

"Last year on one day at about 8 p.m. the accused came to our saloon and enquired me about my brother. I informed the accused that my brother had gone out and he will be returning soon. Accused stayed in my saloon only. My brother Murthy Prasad returned to Saloon at about 9 p.m. Myself, my brother and accused took meals in the saloon and slept in the saloon."

Thus, it is evident that Shankara (PW.8) in his deposition in court did not mention about the first visit of the appellant and demand of Rs.150/- from Murthy Prasad.

(II) Medical Evidence & Ocular Evidence:

As per the medical evidence, injury nos.7 and 9 found on the person of Murthy Prasad deceased had been fatal and could be caused with the

pointed part of the scissors, if used holding sharp edge and tip of the scissors open, at the time of assault.

In his oral complaint on 26.3.1996, Shankara (PW.8) had stated that the accused caused the injuries with knife. He deposed in the Court:

"Accused was stabbing my brother with a scissors. He stabbed on the stomach of my brother... Accused also stabbed me from the scissors on my left side of stomach, on right hand and on the left shoulder...Now I see the scissors M.O.1, the accused assaulted me and my brother with M.O.1". (Emphasis added)

Thus, it is apparent from the above that Shankara (PW.8) was not sure as to whether injuries were caused by knife or scissors. No explanation came forward as to whether the complainant, Shankara (PW.8) was capable to understand the distinction between knife and scissors.

(III) Identity of the accused:

As per Ramanjanamma (PW.3), brother of one Rudresh murdered Murthy Prasad. According to Sriram (PW.4), the brother of Umesh assaulted them: "I do not know who is brother of Umesh. I do not know the accused." Shankara (PW.8) refers to the accused as brother of Rudresh. Abdul Suban (PW.17) stated that "I tried to ascertain and search for Rudresh but he was not found. I did not enquire the father of the accused and his family members about Rudresh".

(IV) FSL Report:

As per Abdul Suban (PW.17), he sent all the seized articles including M.O.1 for FSL examination through Police Constable 2313 on 2.6.1996 and received back on 7.6.1996. However, FSL report was not produced before the Court. Abdul Suban (PW.17) has admitted that he received the Post Mortem report and FSL report and after completing the investigation he submitted the charge sheet on 27.6.1996. No explanation has been furnished as to why this FSL has not been produced before the court as it was necessary to ascertain as to whether M.O.1 was actually used in the commission of offence or not.

(V) Recovery of weapon:

As per Abdul Suban (PW.17) the accused in the presence of panchas had seen the occurrence and also took out a scissors hidden under a stone slab near the saloon. He seized the scissors M.O.1 in the presence of Panchas under Panchnama Exh. P-8. As per the evidence of Ganganarasaiah (PW.9) the scissors was in the bucket which was filled with water. The bucket was inside the shop. The police alone saw it. Narayanaswamy (PW.15) stated that the accused told him that he committed the offence and he took out a scissors kept under a stone slab. Police seized the same and wrapped in a cloth and drawn a mahazar. He signed the mahazar and stated that M.O.1 was the scissors seized by the police."

Learned counsel further submitted that there is a delay of 2 days in recording the statement of PW.4 under Section 161 Cr.P.C and he relied on the judgment of the Supreme Court in **State of Orissa v. Mr Brahmananda Nanda wherein**, wherein it was held as follows:

"The entire prosecution case against the respondent rests on the oral

evidence of Chanchala (PW. 6) who claimed to be an eye-witness to the murder of Hrudananda, one of the six persons alleged to have been killed by the respondent. The learned Additional Sessions Judge believed her evidence, but the High Court found it difficult to accept her testimony. The High Court has given cogent reasons for rejecting her evidence and we find our selves completely in agreement with those reasons. We have carefully gone through the evidence of this witness, but we do not think we can place any reliance on it for the purpose of founding the conviction of the respondent. The evidence suffers from serious infirmities which have been discussed in detail by the High Court. It is not necessary to reiterate them, but it will be sufficient if we refer only to one infirmity which, in our opinion, is of the most serious character. Though according to this witness, she saw the murderous assault on Hrudananda by the respondent and she also saw the respondent coming out of the adjoining house of Nityananda where the rest of the murders were committed, she did not mention the name of the respondent as the assailant for a day and a half. The murders were committed in the night of 13th June, 1969 and yet she did not come out with the name of the respondent until the morning of 15th June, 1969. It is not possible to accept the explanation sought to be given on behalf of the prosecution that she did not disclose the name of the respondent as the assailant earlier than 15th June, 1969 on account of fear of the respondent. There could be no question of any fear from the respondent because in the first place, the respondent was not known to be a gangster or a confirmed criminal about whom people would be afraid, secondly, the police had already arrived at the scene and they were stationed in the Club House which was just opposite to the house of the witness and thirdly, A.S.I. Madan Das was her nephew and he had come to the village in connection with the case and had also visited her house on 14th June, 1969. It is indeed difficult to believe that this witness should not have disclosed the name of the respondent to the police or even to A.S.I. Madan Das and should have waited till the morning of 15th June, 1969 for giving out the name of the respondent. This is a very serious infirmity which destroys the credibility of the evidence of witness. The High Court has also given various other reasons for rejecting her testimony and most of these reasons are, in our opinion, valid and cogent. If the evidence of this witness is rejected as untrustworthy, nothing survives of the prosecution case.”

He also relied on the judgment of the Supreme Court in **Lahu Kamalakar Patil and another v. State of Maharashtra**, wherein it was held as follows:

“Keeping in view the aforesaid position of law, the testimony of PW 1 has to be appreciated. He has admitted his signature in the F.I.R. but has given the excuse that it was taken on a blank paper. The same could have been clarified by the Investigating Officer, but for some reason, the Investigating Officer has not been examined by the prosecution. It is an accepted principle that non-examination of the Investigating Officer is not fatal to the prosecution case. In *Behari Prasad v. State of Bihar*[14], this Court has stated that non-examination of the Investigating Officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. [In Bahadur Naik v. State of Bihar](#)[15], it has been opined that when no material contradictions have been brought out, then non-examination of the Investigating Officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to

the accused. It is worthy to note that neither the trial judge nor the High Court has delved into the issue of non-examination of the Investigating Officer. On a perusal of the entire material brought on record, we find that no explanation has been offered. The present case is one where we are inclined to think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded under Section 161 of the Code. Thus, this Court in *Arvind Singh v. State of Bihar*[16], [*Rattanlal v. State of Jammu and Kashmir*](#)[17] and [*Ravishwar Manjhi and others v. State of Jharkhand*](#)[18], has explained certain circumstances where the examination of Investigating Officer becomes vital. We are disposed to think that the present case is one where the Investigating Officer should have been examined and his non-examination creates a lacuna in the case of the prosecution.”

Learned counsel therefore contended that the conviction and sentences imposed by the Court below are liable to be set aside and the appellants are liable to be acquitted.

10. On the other hand, the learned Public Prosecutor for the State would submit that the conviction and sentences imposed against the accused by the trial Court being proper, needs no interference of this Court in these appeals.

11. We have perused the depositions of the witnesses, judgment of the trial Court and all other material papers available on record and thoroughly considered the submissions made by both the counsel.

12. Basing on the rival contentions, the following point arise for consideration before us in these appeals:-

Whether the prosecution could establish the guilt of the accused beyond all reasonable doubt?

13. Perusal of the record and the evidence shows that the appellants and the deceased were neither friends nor foes. Absolutely, nothing is placed on record to show as to why the accused assaulted the deceased resulting in his death. When the deceased and his companion PW.3 were proceeding on different

cycles, the accused are alleged to have shouted at them as if they have committed theft. The accused caught hold the two persons and started beating the deceased in spite of the deceased pleading that they are the workers of a nearby Food Zone restaurant and were proceeding to home after duty and that they have not committed any crime. In spite of that the appellants are alleged to have inflicted the injuries on the deceased. Thereafter, A.1 is said to have taken away the cycle of the deceased and therefore, he is charged with an offence of theft.

14. The case is based on the evidence of eye-witnesses. Even in the absence of there being any motive, if the prosecution could place satisfactory, cogent and reliable evidence on record to nail the accused that can be taken as proving the case unlike the case based on circumstantial evidence. In the instant case, according to the prosecution, PW.4 – Margowli Ganesh and his brother Anand, who has been listed as Witness No.6 but not examined, are the eye-witnesses in addition to one Gulam Rabbani, who is also listed as L.W.8, but not examined. Therefore, even though there were as many as 3 eye-witnesses, who are supposed to speak on the incident proper, the prosecution, for the reasons best known to it, has examined only PW.4 and the remaining 2 were given-up. Whether the evidence of PW.4, the solitary eye-witness, is convincing and inspires confidence of the Court is what is required to be seen. We have carefully perused his testimony and the surrounding facts and circumstances. We have no hesitation in observing that the testimony of PW.4 cannot be said to be conclusively establishing the guilt of the accused.

15. Firstly, PW.4 is said to have witnessed the attack on the deceased at about 11.00 p.m., on 30-04-2008. He has also seen the events immediately thereafter. PW.4 claims to have went back inside his house and did not inform about the incident to anybody including his parents. He claims that only on the next day morning, he told his parents as to what he has seen the previous night at about 11.00 p.m. He is a young boy, aged about 23 years and if really he has seen the ghastly attack, he would not have slept over quietly without informing anybody. That apart, according to PW.4, the police recorded his statement two

days after the incident. This is palpably false since the Investigating Officer PW.9 categorically asserts that he examined PW.4 only on 07-05-2008, which is seven days after the incident. PW.4 claims to be the resident of the house in front of which the incident took place. The police visited the scene of offence in the night and in the next morning conducted scene of offence panchanama, inquest panchanama and other investigation. In spite of that, PW.4 do not appear to have informed the police as to what he has actually seen the previous night. The investigating agency do not appear to have attempted to secure the presence of the immediate neighbourhood resident so as to ascertain as to whether any incident took place which they have witnessed.

16. As already stated, PW.3 is a companion of the deceased. He deposed that on 30-04-2008 when himself and the deceased were proceeding on the cycles and when they were near the Andhra Bank, Vijaya Nagar Colony, A.1 shouted at them as 'thief, thief' and so saying, A.1 caught hold the deceased whereas PW.3 ran away. Next day morning, PW.3 came to know about the death of the deceased and therefore, he suspected that A.1 might have caused the death. The conduct of PW.3 is also not above board. If really he has seen the deceased being assaulted by A.1, he would not have ran away from there and did not bother to know as to what happened to his friend till next day morning. Even otherwise, according to PW.3, it is A.1, who has caught hold of the deceased and PW.3 has not seen anything thereafter.

17. According to PW.4, he is a milk-vendor and he is acquainted with both A.1 and A.2. He deposed that on 30-04-2008 at about 11.00 p.m., he along with his brother Anand-L.W.6 were proceeding to their terrace for sleeping, they heard some sounds near water tank, situated on the side of the lane in front of their house. He further deposed that A.1 brought one Nepali young man, aged about 22 years, to the water tank and announced that the said Nepali person is a thief. He also noticed A.1, A.2 and the juvenile delinquent taking away the deceased towards transformer. He further deposed that the said Nepali boy ran away but he was chased by A.1, A.2 and the juvenile and they brought him back to the transformer. Thereafter, A.1, A.2 and the juvenile started beating that boy with hands. He further deposed that the juvenile picked up a stick and

beat the said Nepali boy twice or thrice and when the said Nepali person fell on the fencing and seeing the blood, A.1, A.2 and the juvenile got frightened and sent away the said Nepali person and they themselves went away to their houses.

18. If what PW.4 said is to be believed, the incident that actually took place was wherein the accused Nos.1 and 2 beat the deceased with hands and the non-appellant (juvenile) beat the deceased with a stick on head. Thereafter, the deceased went away from there so also the accused persons.

19. The medical evidence on this aspect is quite contrary to what is claimed by PW.4. The Doctor, who examined the deceased and conducted post-mortem examination, found as many as 9 injuries and out of them, 7 injuries were stab injuries and 2 were contusions. The Medical Officer, on the basis of the post-mortem report-Ex.P.12, opined that the cause of death of the deceased is due to multiple stab injuries. It is not spoken to by any of the witnesses as to who stabbed the deceased with a sharp edged weapon. As already stated, the evidence on record is that when A.1 and A.2 beat the deceased with hands, A.3 – the non-appellant (juvenile) gave two blows with the stick on head. If the evidence of the eye-witness is juxtaposed with that of the medical evidence, only 2 injuries which are contusions can be co-related and those 2 injuries could have been caused with the stick which according to PW.4 was caused by the juvenile delinquent. Who have caused the 7 other stab injuries is not known. When the ocular evidence and the medical evidence on record is quiet at variance and there are material discrepancies and inconsistencies in between the two and if the prosecution could not substantiate the injuries sustained by the deceased which were found in the post-mortem report, the case of the prosecution gets weakened. According to the medical evidence on record, the cause of death of the deceased is stab injuries which even according to the prosecution and the eye-witness PW.4 are not caused by the accused.

20. The other evidence on record also raises substantial doubt as to how and where the incident took place. If the sketch-Ex.P.3 is perused, the house of one Bukhar where the assault is said to have taken place is at a distance of 150

metres from the house bearing No.6-A where the dead body of the deceased was found lying. The photographs and the evidence of the panch witnesses and the scene of offence panchanama clearly show that half of the dead body of the deceased was found underneath a car which was parked in front of the house bearing No.6-A. Through out the distance of 150 metres i.e., from the house of Bukhar, the house No.6-A, blood stains were found. The grilled fencing is at the house of Bukhar. At that place, the accused are alleged to have beat the deceased with hands and sticks and when the deceased fell on the fencing and blood came out, the accused sent away the deceased and the accused returned to their houses. If that be the case, how can the deceased, with so many deep stab injuries, cover a distance of 150 metres and fell down in front of the house bearing No.6-A and that too, half of his body being under a parked car.

21. Learned trial Judge has failed to appreciate these aspects in proper perspective and has erroneously held that it is A.1 and A.2 and another, who have caused the injuries to the deceased resulting in his death.

22. The above circumstances falsifies the version of the investigating agency, having regard to the above facts and circumstances, the delay in recording the statement of PW.4 assumes importance in this case and on account of the said delay, we have to necessarily hold that on account of delay there is every possibility for implicating innocent persons of the opposite faction and also introducing a false and distorted version.

23. If there are latches or lapses on the part of the investigation, we are aware that on that score, the testimony of the eyewitnesses, if it is trust worthy, cannot be discarded. But here is a case wherein the entire investigation conducted by PW.10 is found to be false and the evidence of eyewitnesses, which consists of material inconsistencies, is also highly undependable. Therefore, we have to hold that the entire version of the prosecution must be rejected.

24. For the foregoing reasons, the criminal appeals are allowed and the conviction and sentence imposed by the Court of II Additional Metropolitan Sessions Judge, Hyderabad in S.C.No.288 of 2009 against the accused/appellants in both the appeals for the offences under Sections 341, 302 IPC against A1 and A2 and Section 379 IPC against A1 are set aside and they are acquitted of the said charges. The accused shall be set at liberty forthwith, if not required in any other case. Fine, if paid, shall be refunded.

G.CHANDRAIAH,J

M.S.K.JAIASWL,J

Date: 24.03.2015

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HON'BLE SRI JUSTICE G.CHANDRAIAH

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