

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

CRIMINAL APPEAL NO.271 OF 2011

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

The appellant is the sole accused in Sessions Case No.82 of 2007 on the file of the learned V Additional Sessions Judge, Rayachoty. By judgment dated 04.03.2010 rendered therein, the learned Sessions Judge convicted him under Section 302 IPC for the murder of Sadak Ali Khan and sentenced him to undergo rigorous imprisonment for life apart from paying a fine of Rs.1,000/- in default of which, he was to suffer simple imprisonment for six months. He was also convicted under Section 324 IPC for causing hurt by a dangerous weapon to Patan Nawaz Ali Khan @ King Kong (P.W.1) and sentenced to rigorous imprisonment for three years. Aggrieved by the convictions and sentences visited upon him, the accused is before this Court in appeal under Section 374(2) CrPC.

The case of the prosecution, in brief, was as under:

On 20.12.2006 at 6.15 PM, the Assistant Sub-Inspector of Police, Rayachoty (P.W.9), received intimation from the Government Hospital, Rayachoty, to the effect that the deceased was brought dead to the hospital while P.W.1 was brought with injuries. Ex.P7 is the hospital intimation. P.W.9 then went to the hospital and recorded the statement of P.W.1 from 6.30 PM to 7.00 PM in the presence of the duty doctor. Ex.P1 is the said statement. He returned to the Police Station at 7.15 PM and registered Crime No.302 of 2006 under Sections 324 and 302 IPC. Ex.P8 is the original FIR. The Inspector of Police, Rayachoty (P.W.10), then commenced investigation. He

proceeded to the Government Hospital, Rayachoty, and recorded the statement of P.W.1 and. He posted a guard at the hospital mortuary where the body of the deceased was kept. On 21.12.2006, he served summons on witnesses and panchayatdars and conducted inquest proceedings over the body of the deceased at the mortuary from 7.00 AM to 10.00 AM. Ex.P2 is the inquest report. During the inquest, he examined Shaik Abdul Rasheed (L.W.2), P.W.2, Jahangeer Basha (L.W.4), P.W.3 and Shaik Mubarak (L.W.6) under Section 161 CrPC. He also seized the blood-stained white full shirt (M.O.2), white mill-made banian (M.O.3) and blood-stained black colour pant (M.O.4) of the deceased. He then sent the body of the deceased for post-mortem examination. Thereafter, he reached the scene of the offence at Mohammadpura Street, Rayachoty. There, he seized a blood-stained polish stone (M.O.5) and a controlled polish stone (M.O.6). He prepared the observation of the scene of offence police proceedings (Ex.P9) and a rough sketch of the scene of offence (Ex.P10). He sent the material objects to the Regional Forensic Science Laboratory, Kurnool, through Court. On 23.12.2006, he received information about the accused and arrested him at his house. When he interrogated the accused at his house, he confessed to the commission of the crime. Ex.P3 is the panchanama. He then secured two mediators – Syed Khader Basha (L.W.10) and P.W.6 and in their presence, the accused produced the iron rod (M.O.1), which was used as a weapon to attack the deceased and P.W.1. The same was seized under a panchanama. Ex.P4 is the admissible portion thereof. Signatures of the mediators were obtained on the label affixed on M.O.1. The accused was then sent for remand. The successor-in-office of P.W.10 completed the investigation and laid a charge sheet.

Upon committal, the learned Sessions Judge framed the following charges:

'Firstly:- That you the accused on or about 20th day of December, 2006 at about 17-45 hours at Mohammadpura Street, Rayachoty town, have committed the murder intentionally causing death of Sadak Ali Khan s/o Abdul Rasheed by beating him with iron rod on his head and causing severe injuries and that thereby you the accused have committed the offence punishable u/s 302 of I.P.C. which is within my cognizance.

Secondly:- That you the accused on the same day and time and place as noted in the first charge, have voluntarily caused hurt to Patan Nawaz Ali Khan @ King Kong s/o Akbar Ali Khan, by means of iron rod which is an instrument if used as weapon of offence likely to cause death and that thereby you the accused have committed the offence punishable u/s 324 I.P.C. which is within my cognizance.'

The accused pleaded innocence and claimed to be tried. Thereupon, the prosecution examined ten witnesses and marked ten exhibits. The defence did not adduce any oral evidence but marked Exs.D1 to D3, parts of the statements of P.Ws.1 and 3 recorded under Section 161 CrPC. Case properties were shown as M.Os.1 to 6.

Salient points emerging from the evidence may now be noted.

P.W.1, the injured eye-witness, stated that he was an auto driver by profession and resided at Kothapalli, Rayachoty Town. He said that the deceased was his friend and that he knew the accused also. He said that the accused had murdered the deceased at about 5.40 PM three years ago at the tailoring shop of the accused situated at Mohammadpura Street, Kothapalli, Rayachoty Town. According to him, at about 5.30 PM on that day, he and the deceased started in his auto to go to the waste material shop of the deceased and when they reached near the tailoring shop of the accused, he came out from the shop and stopped their auto. He then came to the deceased who was sitting in the back seat of the auto and questioned him as to why he had asked him to vacate the site in which he was running his

shop and as to where he should go by vacating the said site. He threatened him, asking him as to who would come to his rescue if he killed him there. The accused also stated that the deceased had beaten him two days prior thereto, demanding that he vacate the site. Saying so, he dragged the deceased from the auto and beat him with the iron rod, which he was holding in his hand, on the back of the head. The deceased sustained a bleeding injury and fell on the stone slab in front of the shop of the accused. P.W.1 said that he then got down from the auto and questioned the accused and the accused beat him also with the same iron rod on the right side of his forehead and also on the left side of his cheek. P.W.1 said that he sustained a bleeding injury on the right side of his forehead and a swelling on his left cheek and ran to the house of the deceased so as to escape. He raised cries and fell down in front of the house of deceased. Upon hearing his cries, the father and wife of the deceased came out from the house. They then took P.W.1 and the deceased to the Government Hospital, Rayachoty, in another auto. The doctor at the hospital declared the deceased dead and treated him for his injuries. When the police came there, P.W.1 said that he made a complaint and the police recorded his oral report. He identified Ex.P1 as the said report. He said that there were disputes between the deceased and the accused with regard to the site in which the accused was running his tailoring shop. He identified M.O.1 as the iron rod used by the accused during the commission of the offence. In his cross-examination, P.W.1 denied that there were many cases registered against him by Rayachoty police but admitted that there was one case registered against him. He denied that the deceased was a reputed rowdy-sheeter in Rayachoty. He said that on the fateful day,

the deceased had called him on his phone at about 5.00 PM to come to his house. He said that he provided free auto service to the deceased as he was his friend and the deceased used to pay some amount now and then. He admitted that the deceased was ten years younger than him and that, prior to his becoming an auto driver, he worked in the waste material shop of the deceased. He said that this was three years prior to the date of the offence. He said that his house was situated at a distance of about one furlong from the house of the deceased, in a different street. He admitted that the distance between the scene of the offence and the house of the deceased was 20 feet. He also admitted that the site in which the accused was running his tailoring shop belonged to the accused and the site behind the tailoring shop also belonged to him. The said site was given by the accused on lease to some people who manufactured sweets. The house of the deceased was adjacent to the site leased to the sweet manufacturers. He said that while going to the house of the deceased, he did not see the shop of the accused but while going to the shop of the deceased, he reached the shop of the accused. He denied the suggestion that there was no need to go in front of the shop of the accused to go to the shop of the deceased from the house of the deceased. He said that the deceased sat in his auto at about 5.30 PM at his house. He denied knowledge of any altercation between the accused and the deceased prior to the offence and said that he learnt about the same only through the accused at the time of the offence. He said that the distance between the house of the deceased and his shop was about one furlong. He denied the suggestion that as the distance was only one furlong, there was no necessity for the deceased to use the auto. He admitted that the road

in front of the house of the deceased was a bazaar and people used to pass through it regularly. He however denied the suggestion that the said road was a busy road. He admitted that there were residential houses also on all sides of that locality and that there were about 40 to 50 houses around the scene of the offence. He said that to his knowledge, nobody witnessed the occurrence except him. He said that the wife of the deceased came there after he fell down in front of their house. He said that he could not say as to in whose auto he and the deceased were taken to the hospital. The wife of the deceased was stated to have accompanied them in that auto. He denied that he had stated before the police as in Ex.D1, a portion of his statement recorded under Section 161 CrPC, wherein it was stated to the effect that the father of the deceased was outside the house and came running upon hearing his cries. He said that as the accused beat the deceased before he could get down from the driver seat of the auto, he could not interfere and rescue the deceased. He affirmed that the incident of beating did not occur inside the auto and that the accused dragged the deceased about four or five feet away from the auto. He said that he received an injury after getting down from the auto. He said that by the time he reached the accused at a distance of five or six feet away from the auto, the accused had already beaten the deceased. He denied the suggestion that the deceased was a rowdy and that he was beaten by some unknown persons and when his body was left at the scene of the offence, this case was foisted against the accused with a view to get his property by blackmailing him. He said that the police did not seize his auto and that he was running the said auto on hire. He stated the auto number and said that it was owned by one Syfulla Khan of Trunk Road, Rayachoty. He denied the

suggestion that M.O.1 iron rod shown to him was not used by the accused. He denied the suggestion that the injury on the right side of his forehead was not caused with M.O.1 iron rod.

P.W.2, the wife of the deceased, stated that P.W.1 was a friend of her husband. Shaik Abdul Rasheed (L.W.2) was her father-in-law. She identified the accused as the person running a tailoring shop adjacent to their house. She said that on 20.12.2006 at about 5.45 PM, her husband was murdered by the accused near his tailoring shop and as on that date, she was eight months pregnant. She said that on that day at about 5.30 PM, her husband called P.W.1 by telephone to go to his shop in the auto. P.W.1 then came with his auto and her husband went in that auto. Within fifteen minutes thereafter, she said that they heard some cries and her father-in-law and she both came out from the house and found P.W.1 fallen in front of their house with a bleeding injury on the right side of his forehead. They then found her husband lying in front of the tailoring shop of the accused on a stone slab with bleeding injuries on the back of his head. He was lying at a distance of about 30 feet away from their house. She said that they then took her husband and P.W.1 in another auto to the Government Hospital, Rayachoty. The doctor at the hospital examined her husband and declared him dead. She said that P.W.1 informed them in front of their house that the accused had caused injuries to her husband. She said that her husband asked the accused to sell his site in which he was running his tailoring shop and on that issue, there were disputes between her husband and the accused. She said that this was the motive for the accused to cause injuries to her husband. She said that about two days prior to the offence, her husband beat the accused with regard

to this dispute. She said that the police conducted an inquest over the body of her husband at the hospital and she was present at that time. She identified M.O.2, M.O.3 and M.O.4 as the clothes of her husband. In her cross-examination, P.W.2 said that she married the deceased three years eight months prior to his death. Two days prior to the offence, she said that her husband informed her about the dispute between him and the accused. She said that her husband did not inform her that he had beaten the accused two days prior to the offence. She said that she informed the police that there were disputes between her husband and the accused two days prior to the offence, but she had not stated that her husband beat the accused. She again stated that she informed the police that two days ago, her husband beat the accused. She admitted that she did not witness her husband beating the accused. She denied the suggestion that her husband was a reputed rowdy in the village. She said that after her marriage with her husband, there were no police cases against him and that she did not know as to whether there were cases prior thereto. She said that P.W.1 used to work in their shop previously but was running an auto by the date of the offence and also working in their shop. She said that the accused did not choose to give a report against her husband when he was beaten two days prior to the offence. She admitted that she did not witness the occurrence proper in this case and that she came out from the house upon hearing the cries of P.W.1. Upon seeing him with injuries, she said that she called her father-in-law and he came from inside the house and they both then went to the place where her husband was lying. She denied that P.W.1 was not in a position to speak when they found him lying in front of the house. She denied the suggestion that P.W.1 did not state

anything to her and that she did not see the scene of the offence. She said that she did not see the iron rod used by the accused in the commission of the offence at the scene. She said that she did not observe what happened to the auto of P.W.1 and she could not say as to in whose auto they took her husband and P.W.1 to the hospital. She said that some passers-by also gathered at the scene of the offence but nobody informed her about the manner of commission of the offence except P.W.1. She denied the suggestion that some unknown enemies of her husband murdered him and left his body near the shop of the accused and they foisted a case against the accused with a view to get his site by blackmailing.

P.W.3, a resident of Rayachoty Town, was also an eye-witness to the commission of the offence. He said that his house was situated at Mohammadpura Street and on that day at about 5.45 PM, he was going to his house through the lane in which the tailoring shop of the accused was situated. He said that he saw the accused and deceased altercating and then the accused beat the deceased with an iron rod on the back and then beat P.W.1 on his forehead and face with the iron rod. After beating P.W.1, the accused left the scene. P.W.1 ran and fell down in front of the house of the deceased. The deceased fell down in front of the tailoring shop of the accused prior to P.W.1. The wife of the deceased came out from her house and ran to her husband who was lying in front of the shop of the accused. P.W.2 and the father of the deceased took him and P.W.1 in an auto to the Government Hospital, Rayachoty. P.W.3 identified M.O.1 as the iron rod used by the accused for beating the deceased and P.W.1. In his cross-examination, P.W.3 stated that he did not have personal acquaintance with the accused. He denied having stated to the police

as in Ex.D2, a part of his statement recorded under Section 161 CrPC, to the effect that the deceased was forcing the accused to sell his house site. He said that about three or four months prior to the death of the deceased, he saw the deceased asking the accused to sell his site near the shop of the accused. He also denied having stated before police as in Ex.D3, a portion of his statement recorded under Section 161 CrPC, to the effect that he saw the deceased beating the accused two days prior thereto. He said that there were 10 or 15 persons in the street at the time of the offence and they witnessed it. He said that he did not try to intervene when the accused was beating the deceased and P.W.1. He said that he was at a distance of 10 feet from the deceased and P.W.1 at that time. He said that there was no auto at the scene of the offence, but there was an auto in front of the house of one Shaik Mubarak (L.W.6). He said that the said auto might be of Shaik Mubarak and that the son of Shaik Mubarak was then driving an auto on hire. He said that he saw the deceased from a distance of about 10 feet and after beating the deceased, the accused went and beat P.W.1 near the house of the deceased. P.W.1 was at a distance of about 15 feet from the deceased at that time. The distance between the auto in front of the house of Shaik Mubarak (L.W.6) and the scene of the offence was 15 feet. He said that P.W.2 came out from her house and later, the father of the deceased came. P.W.3 said that he was there till the deceased and P.W.1 were taken in an auto by P.W.2 and her father-in-law to the hospital. He denied the suggestion that he did not witness the occurrence and that he was deposing falsely.

P.W.4 was a witness to the inquest proceedings. He identified Ex.P2 as the inquest report and confirmed that he signed therein. In

his cross-examination, he denied the suggestion that he was not present at the time of the inquest and that he was deposing falsely.

P.W.5 was the other witness to the inquest proceedings. He also identified Ex.P2 as the inquest report and confirmed that P.W.4, he and others had signed therein. In his cross-examination, he said that the contents of Ex.P2 inquest report were not read over to him and he did not read it. He denied the suggestion that he was not present at the time of the inquest.

P.W.6 was a witness to the recovery panchanama, whereunder M.O.1 was seized. He stated that about three years previously at 8.00 AM on one day, the police arrested the accused at Lakkireddipalli Road and he and his friend, Syed Khader Basha (L.W.10), were present. He said that they were there near the Thana of Rayachoty town and the Circle Inspector and his staff came on a jeep and called him and his friend to accompany them. They then boarded the jeep and when it reached near Sacred Heart School situated at Lakkireddipalli Road, the accused on seeing the police tried to run away from there. The police then stopped the jeep and detained the accused. On his interrogation by the Circle Inspector of Police, the accused confessed to having committed the offence and the police prepared a panchanama incorporating his confession (Ex.P3). P.W.6 said that he and his friend, Khader Basha (L.W.10), signed in that panchanama and identified Ex.P3 as the admissible portion of the panchanama dated 30.12.2006. He said that the accused then led them to his house at Kothapalli of Rayachoty and there, the accused produced one iron rod from his house stating that the same was the rod used in the commission of the offence. P.W.6 identified M.O.1 as the said iron rod. Ex.P4 is the admissible portion of the seizure

panchanama dated 30.12.2006 and P.W.6 confirmed that he signed therein also. In his cross-examination, P.W.6 said that he and his friend were near the Thana of Rayachoty having tea at about 8.00 A.M. He said that the distance between the Thana and Sacred Heart School was about one mile. He said that he never saw the accused prior to the date of Ex.P3. He said that by the time of drafting of Ex.P3, his friend, Khader Basha (L.W.10), informed him of the identity of the accused, as he knew him. He said that he did not read Exs.P3 and P4 panchanamas and did not know the contents thereof. He said that even prior to Ex.P3, he was aware of the murder of the deceased as he knew him. He said that the shop of the deceased was adjacent to his house and he used to see the deceased since his childhood. He said that he knew P.W.1 also as he used to come to the shop of the deceased and also worked in his shop prior to his running an auto. He said that the distance between the houses of the accused and the deceased was about half a kilometre. He further stated that the distance between the house of the accused and the shop of the deceased was about one kilometre. He admitted that M.O.1 was with rust coloured painting and that the said painting was there even at the time of its seizure by the police. He denied the suggestion that as the deceased was his neighbour and relative, he was deposing falsely.

P.W.7, a Civil Assistant Surgeon at the Community Health Centre, Rayachoty, conducted the post-mortem examination of the body of the deceased. He spoke of the external and internal injuries found by him and opined that the deceased would have died due to shock and hemorrhage caused by multiple injuries and an injury to a vital organ, i.e., the brain, about 12 to 15 hours prior to his

examination. He identified Ex.P5 as the post-mortem certificate issued by him. He said that on 20.12.2006 at 6.00 PM, P.W.1 was brought to the hospital by an unknown auto driver who dropped P.W.1 at the hospital and left. He said that P.W.1 was conscious but was in a drowsy state. He admitted that he did not mention so in the wound certificate, Ex.P6. He spoke of the three injuries found by him on P.W.1 and said that he referred the case to S.V.R.R.Hospital, Tirupathi, for investigation. He said that the MLC X-ray report dated 20.12.2006 of S.V.R.R.Hospital showed that no bony injury was there. He said that the injuries of P.W.1 were simple in nature and that P.W.1, at the time of his examination, informed him that he was assaulted by a known person with an iron rod and sticks. He confirmed that Ex.P6 was the wound certificate issued by him. In his cross-examination, P.W.7 stated that in the same auto, both P.W.1 and the deceased were brought by the unknown auto driver, who left. He admitted that injury 2 noted in Ex.P6 wound certificate was possible by a fall on a blunt surface like stone. He said that injuries 1 and 2 noted in Ex.P5 were possible by hitting blunt objects like stones. External injury 3 noted in Ex.P5 was possible by a violent hit with a stone with heavy force. External injuries 4 and 5 were possible by hitting with sticks or stones with ordinary force. External injury 6 noted in Ex.P5 was possible by coming into contact with a rough object. External injury 7 noted in Ex.P5 was possible by contact with a rough object. External injury 8 noted in Ex.P5 was possible by a stick or by an iron rod. He confirmed that the stomach of the deceased was empty and that he had not taken any food for about five or six hours prior to the death. He also admitted that he did not find any food in the intestines of the deceased.

P.W.8, a Police Constable, stated that on 20.12.2006, upon the direction of the Circle Inspector of Police, Rayachoty, he was posted at the mortuary of the Government Hospital, Rayachoty, for guarding the body of the deceased. He said that on the next day, 21.12.2006, post-mortem examination of the body was conducted.

P.W.9, the Assistant Sub Inspector of Police, Rayachoty, spoke of the various steps taken by him, including registration of Ex.P8 FIR. In his cross-examination, he said that the duty doctor, who was present at the time of his recording the statement of P.W.1, endorsed on Ex.P1 that P.W.1 was conscious, coherent and drowsy. He said that nobody was there by the side of P.W.1 except the duty doctor at that time. He said that he alone went to the hospital at that time. He denied the suggestion that as P.W.1 was drowsy at the time he reached the hospital, there was no possibility for him to give a statement. He admitted that no complaint was preferred by the relatives of the deceased or relatives of P.W.1. He admitted that P.W.1 was a rowdy-sheeter on the file of their Police Station and that there were criminal cases registered against him. He said that he did not know as to whether the deceased was an accused in any offence, but confirmed that the deceased was not a rowdy-sheeter. He disclaimed knowledge of any enemies of P.W.1 and the deceased.

P.W.10, the Inspector of Police, Rayachoty, spoke of the various steps taken by him during the investigation. In his cross-examination, he stated that P.W.1 was a rowdy-sheeter on the file of their Police Station and that there was a case registered against him. He admitted that P.W.1 was not the owner of an auto, but denied the suggestion that he was not even an auto driver. He admitted that he had not seized the auto which was driven by P.W.1 on hire and that

he did not seize P.W.1's driving licence also. He admitted that the deceased and P.W.1 were both unruly elements. He admitted that the accused did not prefer any report to the Police Station with regard to an attack upon him by the deceased. He admitted that he did not collect any evidence regarding the deceased beating the accused on the previous day of the offence. He said that by the time of his inspection of the scene of the offence, there was no auto there. He said that he did not investigate regarding the auto that was there at the time of the offence. He also admitted that he did not investigate as to the auto which was used for taking the deceased to the hospital and as to who drove it. He further admitted that he did not examine the doctor who sent intimation to the Police Station. He admitted that P.W.1 did not state before him that when he and the deceased were proceeding in an auto, the accused attacked the deceased by dragging him from the auto. He confirmed that P.W.1 had not stated before him that at that time, he was driving the auto. He admitted that M.O.1 was not sent to the Forensic Science Laboratory and explained that as it was not having blood-stains at the time of seizure, it was not sent. He denied the suggestion that the case properties were planted. He admitted that he did not seize any blood-stained clothes of P.W.1. He admitted that in Ex.P10 rough sketch, he had not marked as to where exactly the offence had taken place, but the tailoring shop of the accused was noted therein. He admitted that he did not give any requisition to the doctor to ascertain the blood group of the deceased. He admitted that there were multiple injuries on the body of the deceased and the post-mortem examination certificate showed that there were eight injuries. He also admitted that P.W.1 had stated before him that the accused delivered

only two blows on the back of the head of the deceased. He volunteered that P.W.1 stated before him that the father of the deceased took him and the deceased to the Government Hospital in an auto. He admitted that except P.W.1, no other person had witnessed the occurrence. He again stated that Jahangeer Pasha (L.W.4) and Shaik Mubarak (L.W.6) were eye-witnesses along with P.W.3. He admitted that P.W.1 did not state the names of P.W.3 and the others as eye-witnesses. He denied the suggestion that he had planted P.Ws.2 to 6 for the purpose of establishing this case. He confirmed that his investigation did not reveal that sticks were also used against the deceased and P.W.1.

On appreciating the aforestated evidence, the learned Sessions Judge found that there was a delay of four hours in sending the FIR to the Magistrate but held that it was not fatal. Further, the learned Sessions Judge found that the investigation was not proper in this case but observed that the same could not be a ground to acquit the accused, if the prosecution's case was otherwise credible and convincing. Believing the evidence of P.Ws.1 to 3 and also the doctor's evidence, the learned Sessions Judge convicted the accused and sentenced him, leading to the filing of this appeal.

Heard Sri G.Vijaya Saradhi, learned counsel for the appellant/accused, and the learned Public Prosecutor, State of Andhra Pradesh.

As rightly found by the learned Sessions Judge, the investigation in the case on hand left a lot to be desired. The admissions by the Investigating Officer (P.W.10) clinchingly established this. However, faulty investigation by itself cannot be a ground to hold in favour of the accused. Though the prosecution must invariably prove the guilt of the accused beyond reasonable

doubt, minor discrepancies and defects in the investigation cannot be the sole basis for giving the accused the benefit of doubt.

In the present case, there were two eye-witnesses – P.W.1, the injured eye-witness, and P.W.3, an independent eye-witness. The version of the prosecution, as set out before the learned Sessions Judge was that the deceased and P.W.1 were proceeding in an auto to the shop of the deceased when the accused came out of his tailoring shop and accosted them. However, this was not the case put-forth in the charge sheet. No mention was made therein of any auto. However, P.W.2, the wife of the deceased, confirmed that her husband called P.W.1 by telephone and asked him to bring the auto, so that he could go to his shop. P.W.1 also confirmed that he received such a phone call and then came to pick up the deceased. P.W.3, the independent eye-witness, spoke of the presence of an auto at a distance of 15 feet from the scene of offence. He did not know as to whom this auto belonged. Given these facts, the presence of the auto in the vicinity of the scene of offence is adequately confirmed. P.W.1 stated that he was driving this auto on hire. It is therefore possible that the owner of the said auto would have prevailed upon the police to keep it out of the picture, as seizure thereof would impact his livelihood. P.W.10 casually tried to explain it away by saying that he did not find any auto at the scene of the offence. However, the presence/absence of the auto and how P.W.1 and the deceased were proceeding from the house of the deceased to his shop are of no consequence in the light of the testimony of P.Ws.1 and 3 as to commission of the offence by the accused.

In this regard, the contradiction in the statement of P.W.1 and the medical evidence is sought to be relied upon by Sri G.Vijaya

Saradhi, learned counsel, who would state that the deceased suffered as many as eight injuries, but P.W.1 only spoke of two blows. It is however to be noted that when the accused turned upon P.W.1 and beat him, resulting in a bleeding injury, P.W.1 ran away. He would therefore not have witnessed any further attack by the accused upon the deceased, which might have caused the other injuries. The medical evidence therefore does not have the effect of completely undermining the ocular evidence.

Though the evidence of P.W.3, the independent eye-witness, was sought to be assailed on the ground that he was deposing falsely due to his alleged relationship with the deceased, nothing was elicited to confirm any such relationship. No other suggestion was made to him as to why he would depose falsely against the accused.

Another discrepancy in the investigation is as to who actually took the deceased and P.W.1 to the hospital. According to the doctor, an auto driver brought them and left. According to P.W.1, the wife of the deceased and her father-in-law took them. P.Ws.2 and 3 also stated so. P.W.10 conceded that he did not even try to investigate as to who was the auto driver who took P.W.1 and the deceased to the hospital. However, this defect in the investigation is also not fatal. As to who actually accompanied P.W.1 and the deceased to the hospital is of no real consequence to the prosecution's case as to how the offence occurred. Notwithstanding the doubts raised as to whether P.W.1 and the deceased were proceeding by an auto or by walk and as to whether they were taken to the hospital by an auto driver or by P.W.2 and her father-in-law, the irrefutable fact that emerges from the evidence is that the deceased was attacked in front of the tailoring shop by the accused and P.W.1, after being attacked by him,

collapsed in front of the house of the deceased. These facts are vouched for by P.W.3, the independent eye-witness. The motive for the accused to commit the offence is also not far to gather. It is brought out in the evidence that the deceased beat the accused two days prior to the incident in connection with their property dispute. Having suffered this attack, the accused would have been smarting for revenge. The utterances heard by P.W.1, the injured eye-witness, also bear this out. Commission of the offence by the accused is therefore proved beyond reasonable doubt, notwithstanding the lapses in the investigation.

In **K.A.KOTRAPPA REDDY V/s. RAYARA MANJUNATHA REDDY ALIAS N.R.MANJUNATHA**¹, the Supreme Court held on facts that the purported eye-witnesses to the offence could not be relied upon as their presence at the time and place of the incident was not sufficiently proved. However, this judgment is of no avail to the accused, as the presence of P.W.3, the independent eye-witness, is natural as he lives near the scene of the offence and nothing was elicited from him during the cross-examination to doubt his veracity.

In **NARASAPURAM BALAIAH V/s. STATE OF ANDHRA PRADESH**², a Division Bench of this Court observed that the testimony of interested witnesses requires to be carefully scrutinized and when the same is found to be somewhat untrustworthy, it would require corroboration. In the case on hand, though there are some discrepancies in the testimony of the interested witnesses, P.Ws.1 and 2, the eye-witness account of the independent witness, P.W.3, remained unshaken. The judgment therefore does not advance the case of the accused.

¹ 2016 (1) ALD (Gr.) 57 (SC)

² 2016 (2) ALD (Gr.) 331

It would also be apposite to refer to the edict in **KARNEL SINGH V/s. STATE OF M.P.**³ Therein, the Supreme Court, having scrutinized the evidence, found that the Investigating Officer had not taken the care expected of him and the investigation was casual and defective but despite the same, as the Courts below had recorded a conviction, the Supreme Court opined that in cases of defective investigation, the Court has to be circumspect in evaluating the evidence and it would not be right in acquitting an accused person solely on account of the defect as to do so would tantamount to playing into the hands of the Investigating Officer if the investigation is designedly defective. The Supreme Court concluded that on closer scrutiny, the loopholes in the investigation in the said case were to help the accused at the cost of the prosecution and to acquit solely on that ground would be adding insult to injury.

At this stage, Sri G.Vijaya Saradhi, learned counsel, would submit that Ex.P3 confessional statement of the accused may be taken into account in so far as it supports him. He would cite **KANDI VENKATA SUNEEL KUMAR REDDY V/s. STATE OF ANDHRA PRADESH**⁴, wherein a Division Bench of this Court pointed out that the law is well settled that if the accused himself gave a confession admissible to a limited extent under Section 27 of the Indian Evidence Act, 1872 or made an extra-judicial confession before a non-police person, the same can be admitted to the extent it is favourable to the accused for any purpose, i.e., either for consideration of acquittal or for modifying the conviction.

It is on the strength of this judgment, Sri G.Vijaya Saradhi, learned counsel, would request this Court to go through Ex.P3

³ (1995) 5 SCC 518

⁴ 2010 (1) ALD (Cr.) 699 (AP)

confessional statement. He would point out that the accused stated therein that two days prior to the incident, the accused himself delivered two blows to the deceased and as a consequence thereof, the deceased and P.W.1 came to the accused on the fateful day and threatened to kill him if he did not sell his site to the deceased. Learned counsel would state that apprehending a threat to his life, the accused exercised his right of private defence by picking up the iron rod lying in his shop and attacked the deceased and P.W.1. He would therefore state that the benefit of Section 97 r/w Section 100 IPC should be extended to the accused.

Significantly, this version of the accused in his confessional statement is altogether different from what was stated by the witnesses. To begin with, the incident did not take place inside the shop of the accused. Further, P.W.10 confirmed that the deceased was an unruly element while P.W.1 was a rowdy-sheeter. As to whether the accused would have delivered two blows to the deceased as claimed by him is therefore doubtful. Even if the same is to be accepted, it is not the case of the accused that the deceased and P.W.1 were armed with weapons when they came to his tailoring shop and threatened to kill him. The question of his harbouring any real or reasonable apprehension of a threat to his life therefore did not arise.

As pointed out by the Supreme Court in ***DARSHAN SINGH V/s. STATE OF PUNJAB***⁵, the right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and such right commences as soon as a reasonable apprehension arises and is co-terminus with the duration of such apprehension. The Supreme Court further pointed out that it

⁵ 2010 (1) ALT (CrI.) 244 (SC)

is well settled that even if the accused does not plead self-defence, it is open to the Court to consider such a plea if the same arises from the material on record. However, on facts, as we find that there was no possibility of a 'reasonable' apprehension being entertained by the accused as to any threat to his life, his actions cannot be covered by the right of private defence. His claim of exercising the right of private defence to the extent of causing the death of the deceased therefore does not stand up to scrutiny.

On the above analysis, this Court finds that the careless lapses in police investigation coupled with unnecessary attempts to bolster the case against the accused and the superficial defects in the prosecution's version do not have the effect of vitiating the fundamental case built up by the prosecution against the accused.

This Court therefore finds itself in agreement with the findings recorded by the learned Sessions Judge on the strength of which the accused was convicted under Sections 302 and 324 IPC. The sentences imposed are commensurate with the gravity of the offences and the relevant legal provisions. The judgment under appeal is therefore confirmed. The appeal is dismissed.

SANJAY KUMAR, J

A.SHANKAR NARAYANA, J

6th OCTOBER, 2017

PGS