

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CRIMINAL APPEAL NO.272 OF 2011

Between:

Sri Vadde Anjanappa and others .. Appellants

and

State of Andhra Pradesh, Rep. by P.P. .. Respondent

DATE OF JUDGMENT PRONOUNCED: 27.10.2017

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

A. SHANKAR NARAYANA, J

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

+ CRIMINAL APPEAL NO.272 OF 2011

% DATED 27th OCTOBER, 2017

Sri Vadde Anjanappa and others .. Appellants

Vs.

\$ State of Andhra Pradesh, Rep. by P.P. .. Respondent

<Gist:

>Head Note:

! Counsel for the Appellants : Sri A.Hanumantha Reddy

^Counsel for the Respondent : Public Prosecutor (AP)

? CASES REFERRED:

1. 2000 CRI.L.J. 1566
2. (2016) 10 SCC 220
3. (2010) 10 SCC 259
4. AIR 1994 SC 1539
5. AIR 1975 SC 1727
6. (2012) 8 SCC 263
7. (2003) 12 SCC 155
8. (2012) 10 SCC 476
9. (2009) 13 SCC 542
10. (2011) 7 SCC 421
11. AIR 1999 SC 767
12. AIR 1974 SC 1936
13. AIR 1959 AP 325
14. (2013) 4 SCC 422
15. (2008) 16 SCC 99
16. (1995) 5 SCC 518
17. AIR 1965 SC 277
18. (2007) 9 SCC 589
19. (1985) 1 SCC 505
20. (2008) 17 SCC 587
21. AIR 1953 SC 415
22. (1975) 4 SCC 511
23. AIR 1976 SC 2263
24. AIR 1968 SC 1281

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

CRIMINAL APPEAL NO.272 OF 2011

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

By judgment dated 03.03.2011 passed in Sessions Case No.194 of 2008, the learned Additional Sessions Judge, Hindupur, convicted all the ten accused therein of offences under Section 148 IPC; Section 302 read with Section 149 IPC; and Section 324 IPC. They were sentenced to life imprisonment for their conviction under Section 302 IPC r/w Section 149 IPC for the murder of Vadde Subbaramappa. They were also sentenced to rigorous imprisonment for two years each for their conviction under Section 148 IPC and rigorous imprisonment for two years each for their conviction under Section 324 IPC. Aggrieved thereby, the ten accused preferred this appeal under Section 374(2) CrPC.

The charges framed against the accused were as follows:

'Charge No.1: That you A1 to A10 on 11-6-2007 at about 8.00 p.m. near the house of the deceased Vadde Subbaramappa were members of an unlawful assembly and did in prosecution of the common object of such assembly to kill the deceased namely Vadde Subbaramappa and at that time, all of you were armed with sticks, sickles and the weapons of offence likely to cause death of the deceased and that you thereby committed an offence punishable u/sec. 148 of Indian Penal Code and within my cognizance.

Charge No.2: That you A1 to A10 on 11-6-2007 at about 8.00 p.m. near the house of the deceased Vadde Subbaramappa were members of an unlawful assembly and did in prosecution of the common object of such assembly to kill Vodde Guttur Siddaramappa and the deceased namely Vadde Subbaramappa and at that time, all of you were armed with sticks and sickles, A1 of you dealt a blow with a stick on his left hand, A2 of you hacked the deceased on his fore head and waist, A2 and A3 of you hit the deceased with sticks on his hands and legs, causing fractures and the deceased died while undergoing treatment and that you thereby committed an offence

punishable u/sec. 302 r/w 149 of Indian Penal Code and within my cognisance.

Charge No.3: That you A2 to A10 on 11-6-2007 at about 8.00 p.m. near the house of the deceased Vadde Subbaramappa were members of an unlawful assembly and did in prosecution of the common object of such assembly to kill Vodde Guttur Siddaramappa and the deceased namely Vadde Subbaramappa and at that time, all of you were armed with sticks and sickles, A7 to A10 beat Vadde Nija Mallappa with sticks causing injuries on his left hand and right chin, A5 and A6 of you beat Vodde Lakshamma with sticks on her fore head and right hand, A2 to A4 of you beat Vodde Narayanaswamy with sticks and sickles and caused injuries on his both hands and body and also beat Vodde Bharathi with sickles and sticks on her head, A5 and A6 of you beat Vadde Narayappa with sticks on his right leg and thigh and that you thereby committed an offence punishable under Sec. 324 of the Indian Penal Code and within my cognisance.'

The accused denied the charges and claimed to be tried.

During the trial, the prosecution examined 12 witnesses and marked 14 exhibits in evidence. The accused did not adduce oral evidence but marked Exs.D1 to D5, portions of the Section 161 CrPC statements of P.W.1, P.W.4 and P.W.5. Case properties were shown as M.Os.1 to 4.

Salient points emerging from the evidence may now be noted.

P.Ws.1 to 7, all belonged to the Vadde family and were cited as eye-witnesses to the incident which resulted in the death of Vadde Subbaramappa. P.W.2, the sister of P.W.1, was married to the deceased. Srinivasulu, the son of P.W.1, was married to Alivelamma, the daughter of the deceased and P.W.2. Another sister of P.W.1 was married to P.W.3. He was therefore the co-brother of the deceased and the brother-in-law of P.W.1. P.W.4 is the son of P.W.3. P.W.5 is the wife of P.W.4 and also the daughter of P.W.1. P.W.6 is the son-in-law of P.W.1 and also the son of the deceased's brother. All these family members were stated to have witnessed the incident and were allegedly injured in the course of the attack by the accused upon

P.W.1 and the deceased. Their testimony, which was accepted by the Sessions Court, therefore assumes critical importance.

It is well settled that before the evidence of an injured eye-witness can be accepted, the Court should be satisfied that he is a truthful witness and the account furnished by him is in consonance with probabilities, as there is no rule of appreciation of evidence which requires that merely because a witness is injured, his evidence, *ipso facto*, should be accepted as the gospel truth. (See ***TULSHIRAM BHANUDAS KAMBALE V/s. STATE OF MAHARASHTRA***¹).

P.W.1 stated that he had two sons, Srinivasulu and Balaraju, and three daughters, Sajjakka, Ramanjamma and P.W.5. His son, Srinivasulu, was married to Aivelamma, the daughter of his sister (P.W.2) and the deceased. All of them used to reside in Gadralapalli Village, Chilamathur Mandal, Ananthapur District. While so, there was a rumour in the village that P.W.1's son, Srinivasulu, developed intimacy with Sasikala, wife of Jagannath, the brother of A1. They were stated to have eloped from the village five days prior to the incident. On the fateful day, 10.06.2007, at about 8.00 PM, the deceased and P.W.1 were discussing about the disappearance of Srinivasulu and Sasikala in front of the house of the deceased. The accused formed into an unlawful assembly, with A1 and A3 to A10 armed with sticks, while A2 was armed with a sickle. A1 abused P.W.1 and the deceased for the elopement of Sasikala and Srinivasulu and enquired as to their whereabouts. P.W.1 claimed that they informed A1 that they could not trace out Sasikala and Srinivasulu in spite of searching for them. A1 abused them and beat

¹ 2000 CRI.L.J. 1566

P.W.1 with a stick on his left hand fourth finger (ring finger) resulting in a bleeding injury. P.W.1 said that the other accused also beat him with sticks. In the mean time, the deceased intervened and A1 instigated A2 to leave P.W.1 and asked A2 to kill the deceased. Immediately, A2 hacked the deceased with a sickle on the right side of his waist (stomach) and the deceased sustained a bleeding injury. Again, A2 hacked the deceased with the sickle on his fore-head and the deceased fell down. The other accused beat the deceased indiscriminately with sticks and also kicked him and beat him with their hands. In the meanwhile, P.W.3 came there and intervened. A9 and A10 beat P.W.3 with sticks resulting in bleeding injuries. P.W.3 thereupon fell down. P.W.2 also came to the scene on noticing the incident. A5, A1, A10 and the remaining accused beat P.W.2 with sticks resulting in bleeding injuries and she also fell down. She received fracture injuries on her left hand and also sustained injuries on her body. Meanwhile, P.W.4 and P.W.5 came to the scene. A2 hacked P.W.4 with a sickle on his left hand and fore-head resulting in bleeding injuries. A2 also hacked P.W.5 with the same sickle on her head resulting in a bleeding injury. P.Ws.4 and 5 ran away from the spot. A2 chased them armed with a sickle. The other accused also threw away their sticks and followed A2. In the mean time, a 108 ambulance came there and took them to the Government Hospital, Hindupur, for treatment. On the same day night at 10.00 PM, the Sub-Inspector of Police, Chilamathur, came to the Government Hospital, Hindupur, and recorded his statement. By the time the Sub-Inspector of Police, Chilamathur, came there, the deceased had died. P.W.1 added that the deceased succumbed to the injuries immediately after he was brought to the Government Hospital,

Hindupur. P.W.1 confirmed that Ex.P.1 was the complaint given by him to the police and identified his left thumb impression therein. P.W.1 stated that the incident happened under the street electrical light. In his cross-examination, P.W.1 stated that he and the deceased were discussing with each other about Srinivasulu and Sasikala, 4 or 5 yards away from his house, on the cement road on that day. P.W.1 denied that he had stated to the police as in Ex.D1 portion of his Section 161 CrPC statement that he was abusing Srinivasulu for leaving the village. He further stated that he and the deceased were talking in a low voice and that the houses of the accused were situated more than one furlong away from his house. He stated that four accused came in the first instance and started a galata. Later six other accused joined them. He affirmed that all the accused beat him with sticks and stated that A1 to A4 did not attack him when they came earlier than the other accused, but all the ten accused simultaneously beat him together. He denied having stated to the police as in Ex.D2 portion of his Section 161 CrPC statement that A1 to A4 first attacked them with sticks. He further stated that the accused attacked them under the burning street light abutting the tar road in their village and that all of them were drunk. He said that all the accused beat him with sticks all over his body and because of the injuries, he fell down. He said that after receiving the injuries, he was unable to stand and sat underneath the electric pole. He further stated that he was at that place till he was taken to the Government Hospital in an ambulance, along with the other injured. He said that the deceased, who was present there, immediately came to his rescue and A2 hacked the deceased with a sickle on the right side of his waist. A2 also hacked the deceased on his head with a

sickle. The deceased thereupon fell unconscious and collapsed facing downwards. P.W.3 came to the scene before the galata. A10 and A9 beat P.W.3 with sticks resulting in injuries. The accused also beat P.W.4 and P.W.5 resulting in injuries in the same incident. P.Ws.4 and 5 raised cries on seeing the attack on the deceased. P.W.1 denied that as they were doing stone-cutting work, there was a possibility of all of them receiving injuries. In his further cross-examination, P.W.1 stated that the electric pole was situated 6 feet away from his house and not 50 feet as suggested. He said that there was a compound wall and plants surrounding the house of the deceased and the electric pole was situated abutting the compound wall of the deceased. He confirmed that the accused beat him under the electric pole and that no galata happened in front of his house. He further stated that the electric pole was situated abutting the tar road where the incident had taken place and asserted that the incident did not happen within the compound wall of the deceased. He said that the accused threw away the sticks (M.O.2) near the electric pole. He denied that there were ill-feelings and enmity between the accused and one Vadde Gangappa, a contractor, who was the son of the junior paternal uncle of the deceased and that Ex.P1 complaint was brought into existence after deliberations and consultations with the said Vadde Gangappa. He denied that the deceased was indulging in criminal activities and was involved in a number of criminal cases. He concluded by stating that 7 or 8 people came to the scene after hearing their cries and, thereupon, the accused went away.

P.W.2's deposition was on the same lines as P.W.1 in almost all respects but for certain crucial variations. She stated that on the fateful day, her deceased husband and her brother (P.W.1) were

talking about the affair of Srinivasulu and Sasikala in front of her house at about 8.00 PM. According to her, A1 to A4 then came there. A2 was armed with a sickle, while the others were armed with sticks. A1, upon seeing the deceased and P.W.1, started a galata questioning them as to the elopement of Srinivasulu and Sasikala. P.W.1 told them that they were in no way connected with it and they were also searching for them. A1 thereupon abused P.W.1 and beat him with a stick on the left hand and P.W.1 sustained a bleeding injury on his left hand fourth finger (ring finger). In the meanwhile, her husband intervened and A1 asked the other accused to leave P.W.1 and to kill her husband. Immediately, A2 hacked her husband on his waist resulting in a bleeding injury and he again hacked him on his forehead resulting in a bleeding injury. Her husband fell down. The other accused, armed with sticks, indiscriminately beat her husband with their sticks. Her husband sustained fracture injuries and injuries all over his body. In the mean time, P.W.3, her brother-in-law who was present there, intervened. A9 and A10 beat him with sticks resulting in bleeding injuries. A9 and A10 also beat P.W.3 on his right cheek with sticks. P.W.3 immediately fell down. On seeing the incident, P.W.2 said that she also intervened. A5 and A6 beat her with sticks on her left hand and right resulting in fractures and bleeding injuries. A5 beat her with a stick on her fore-head resulting in a bleeding injury. In the meantime, P.W.4 came to their rescue and A2 hacked him on his head resulting in a bleeding injury. He also hacked him on his left shoulder resulting in a bleeding injury. In the meantime, P.W.5 came there and A2 hacked her on her head with a sickle resulting in a bleeding injury. Thereupon, P.W.6 came to their rescue and A10 beat him with a stick on his right leg resulting in a

bleeding injury. On receiving injuries, P.W.4, P.W.5 and P.W.6 ran away due to fear. In the meantime, some villagers gathered there. A2 left the scene along with his sickle and the other accused followed him. The other accused threw away their sticks at the scene. In the meantime, the villagers who gathered there informed a 108 ambulance, which came immediately. P.W.2 said that she along with her injured husband, P.W.1, and P.W.3 were taken in the said ambulance to the Government Hospital, Hindupur. She said that her husband succumbed to injuries while he was undergoing treatment at 11.00 PM on the same day. In the meantime, the Sub-Inspector of Police, Chilamathur Police Station, came to the hospital and examined her and P.W.1. Her brother gave Ex.P1 complaint to the police. P.W.2 identified the blood-stained clothes of her deceased husband (M.Os.3 and 4) and the weapons used, M.O.1 sickle and M.O.2 sticks (6 in number). She stated that she could identify the accused and see the entire incident in the burning street pole light in front of her house. In her cross-examination, P.W.2 stated that the incident had happened in front of her house in the village. She said that there was exchange of abuses between the accused, P.W.1 and her deceased husband when she came out from her house. She said that the incident happened within the compound of her house. She stated that the house of P.W.1 was situated opposite her house and denied the suggestion that P.W.1's house was situated 20 yards away from her house. She again stated that the entire incident happened in front of her house and not in front of the house of P.W.1. She stated that immediately after sustaining an injury on her fore-head, she fell down facing upwards and four accused beat her after she fell down. She confirmed that she stated before the police that after the

arrival of P.W.4 and Ramachandrappa (L.W.7), some villagers also gathered there and on seeing them, the accused left the cement road towards P.W.2's relations house. She stated that the police did not seize her blood-stained clothes. She said that she could not say where the accused threw the sticks used in the commission of the offence and as to who seized them. She said that A2 hacked her husband with a sickle and she noticed the same under the focus of the street tube light and that it was attached to an electric pole in the road. She asserted that the incident had happened on the mud road under a street light in between the tar road and the cement road. She denied the suggestion that her deceased husband sustained injuries in a different incident and that the accused were in no way connected or related with the said incident.

P.W.3 stated that he heard a galata in front of the house of the deceased on the fateful day at 8.00 PM. He then rushed there and noticed the presence of P.W.1, the deceased and all the accused. He said that A1 and the other accused beat P.W.1 with sticks and on noticing the same, the deceased intervened. A1 then asked the other accused to leave P.W.1 and to kill the deceased. P.W.1 received stick blows to his left hand. A2, armed with a sickle, hacked the deceased on his waist resulting in bleeding injuries. A2 again hacked him with the same sickle on his fore-head resulting in a bleeding injury and the deceased fell down. A1, A3 to A10 beat the deceased with sticks resulting in fracture injuries. P.W.3 said that he then intervened and A10 and A9 beat him with sticks. A10 beat him with a stick on his left hand ring finger resulting in a bleeding injury. A9 beat him with a stick on his left chin resulting in a bleeding injury. The other accused also beat him with sticks. In the meantime, P.W.2 came running to

the scene and A6 and A5 beat her with sticks on both her hands resulting in bleeding injuries. P.W.4 and P.W.5 also came to the scene and A2 hacked P.W.4 with a sickle on his head resulting in a bleeding injury. A2 then hacked P.W.5 with a sickle on her head resulting in a bleeding injury. P.Ws.4 and 5 ran away from the scene. In the meantime, P.W.6 came to the scene. A5, A8 and the other accused beat P.W.6 with sticks resulting in bleeding injuries. P.W.6 also ran away from the scene. Some villagers gathered there and upon seeing them, A2 left the scene along with the sickle. The other accused threw away the sticks at the scene and followed A2. In the meantime, a 108 ambulance came and P.W.3, along with the deceased, P.W.1 and P.W.2, were taken to the Government Hospital, Hindupur. The deceased succumbed to his injuries on the same day at 11.00 PM while he was undergoing treatment in the Government Hospital, Hindupur. P.W.3 said that he noticed the entire incident under the street tube light focus. In his cross-examination, P.W.3 stated that he sustained only stick blows in the incident and became unconscious. He claimed that he regained consciousness at the scene almost immediately. He stated that his house was situated 100 or 150 feet away from the house of the deceased. The incident happened under the focus of the street light in between the house of P.W.1 and the house of the deceased, i.e., in front of the house of the deceased outside the compound wall. He said that he was present in front of the house of the deceased and witnessed the incident within the compound wall. He again said that the incident happened within the compound wall of the deceased but not on the road. He affirmed that he received bleeding injuries on his hand and his left cheek but said that he did not observe whether his clothes became blood-stained.

P.W.4 said that on the day of the incident, he along with his father (P.W.3) and his wife (P.W.5) were present at their house. He said that he heard a galata from the house of the deceased and on hearing the cries, his father (P.W.3) immediately rushed there. He said that he, along with his wife (P.W.5), followed P.W.3. He said that he noticed the presence of the accused and that A2 was armed with a sickle, while the other accused were armed with sticks. P.W.1, P.W.2 and the deceased were also present there. A1 questioned P.W.1 about the elopement of Srinivasulu and Sasikala in a drunken state and then beat P.W.1 with a stick on his left hand ring finger resulting in a bleeding injury. In the meantime, the deceased intervened and A1 asked the other accused to leave P.W.1 and to kill the deceased. A2 then hacked the deceased with a sickle on his waist resulting in a bleeding injury. Again, A2 hacked the deceased with the same sickle on his fore-head resulting in an injury. Because of the hack injuries, the deceased fell down and the remaining accused beat him with sticks all over his body resulting in fracture injuries. When his father (P.W.3) intervened, A9 and A0 beat him on his left hand, left cheek and right hand resulting in bleeding injuries. When P.W.2 intervened, A5 and A6 beat her with sticks on both her hands resulting in a fracture injury to her left hand. P.W.4 said that on seeing him, A2 hacked him with a sickle on his head and on both hands resulting in bleeding injuries. When his wife (P.W.5) intervened, A2 hacked her on her head with a sickle resulting in bleeding injuries. The remaining accused beat P.W.5 with sticks all over her body. Due to fear, he said that he and his wife (P.W.5) ran away from the scene through the fields towards Gongatipalli Village. The next day morning at about 6.30 AM, he and his wife (P.W.5) came to the Government Hospital,

Hindupur, for treatment. He said that he noticed the entire incident under the focus of the street tube light. In his cross-examination, P.W.4 said that he heard cries from the house of the deceased for about ten minutes on the day of the incident. He said that by the time he reached the house of the deceased, the accused were present by the side of the cement road and that no galata happened within the compound wall of the deceased or in front of the house of the deceased. He said that by the time he reached the house of the deceased, four accused were present, i.e., A1 to A4 and the remaining accused followed immediately. He again said that before he reached the scene, all the accused were present there. He said that all the accused came together to the scene. He denied having stated before the police as in Ex.D3 portion of his Section 161 CrPC statement to the effect that when A1 questioned P.W.1 about the elopement, in the meantime A5 to A10 came there armed with sticks. He said that all the accused beat P.W.3, his father, and he received bleeding injuries. He again said that A9 and A10 beat his father and also the other accused. He further stated that the accused beat P.W.3 even after he fell down. He said that he did not notice whether his clothes became blood-stained or not in the incident. He said that they took shelter in their relation's house in Gongatipalli Village after the incident and that he was there at Gongatipalli till dawn. Gongatipalli is situated 2 kilometres from his village but he did not know the distance between Hindupur and Gongatipalli Village. He however stated that he and P.W.5 directly came to Government Hospital, Hindupur, from Gongatipalli on the next day after the incident. He said that they came in a bus and till they reached the hospital, they had no information that P.Ws.1 to 3 were taking treatment there. He denied

having stated before the police as in Ex.D4 portion of his Section 161 CrPC statement to the effect that after knowing of the death of the deceased, he and P.W.5 came to the hospital.

P.W.5, in her chief-examination, said that she was present in her house along with P.W.3 and P.W.4 on the fateful day, and at about 8.00 PM she heard a galata from the house of the deceased. She also heard the cries of A1 and upon hearing the galata and cries, they rushed there. She said that when she went to the scene, she found P.Ws.1 and 2 and the deceased. In the meantime, P.W.6 also came there. A1 questioned P.W.1 about the disappearance of Srinivasulu and Sasikala and P.W.1 replied that he did not know their whereabouts. Immediately, A1 beat P.W.1 with a stick on his left hand ring finger resulting in a bleeding injury. The deceased intervened. A1 told the other accused to leave P.W.1 and to kill the deceased. Immediately, A2 hacked on the waist of the deceased with a sickle and again on the fore-head resulting in bleeding injuries. The deceased fell down and A5 to A10 joined with the other accused. She said that immediately they reached the scene armed with sticks. When P.W.3 went to the rescue of the deceased, A9 and A10 beat him with sticks on his left hand and on his right chin. P.W.3 sustained a bleeding injury on his left in the incident. P.W.2 intervened and A5 and A6 beat her with sticks on both her hands resulting in fractures and also an injury on her fore-head. P.W.2 also fell down. A2, on seeing P.W.4, hacked him with the same sickle on both the hands and head resulting in bleeding injuries. A2 also hacked her with a sickle, while A3 and A4 beat her with sticks resulting in bleeding injuries. She said that she sustained injuries on her head and back. Apprehending danger from the accused, she and P.W.4 ran away

from that place to Gongatipalli. She said that they noticed the incident under the street tube light focus. She said that she and P.W.4 stayed overnight with one of her relations in Gongatipalli. The next day morning at 6.00 AM, P.W.4 and she came to the Government Hospital, Hindupur, for treatment. In her cross-examination, P.W.5 said that no galata had happened prior to her arrival at the scene. She said that she heard only cries when she was at her house and except that, she did not hear anything. There were loud cries in the mob. When she reached the scene, A1 to A4, P.Ws.1 and 2 and the deceased were alone present. No galata happened between both groups prior to her reaching there. She said that her house is situated 250 yards away from the scene and except herself, P.W.3 and P.W.4, none came to the scene after hearing the galata. P.W.3 went earlier, then followed by P.W.4 and she followed them. She went to the front of the house of the deceased under the street light. The entire incident, according to her, happened outside the house of the deceased under the street light. She said that she was 10 feet away from the accused when they were attacking the deceased. She said that she, P.W.3 and P.W.4 were standing under the street light at the time of the incident. She denied having stated before the police as in Ex.D5 portion of her Section 161 CrPC statement to the effect that she and P.W.4 were away in a corner and witnessed the incident under the street light and did not go there due to fear. A5 to A10 joined A1 to A4 immediately after they went to the scene. A5 to A10 came along the tar road. She said that A5 to A10 and she, along with P.W.3 and P.W.4, met each other. At that time, A5 to A10 did not do anything. She said that she noticed the incident by standing under the electric street light situated in the bazaar. She

then said that the accused beat the deceased 5 or 8 feet away from her and from the electric pole. She said that she did not go to the rescue of anybody and P.W.4 also thought of intervening but due to fear, he did not go. She said that P.W.4 thought of rescuing his father, P.W.3, but she advised him not to go there as the accused may kill him. P.W.3 fell down because of the injuries and he was conscious but was unable to stand. The deceased also fell down but he was conscious and was unable to stand. She said that she and P.W.4 did not go to see other injured at the scene. She said that A2 did not hack P.W.1, her father, but hacked the deceased, P.W.3, P.W.4 and her. She said that A2 hacked her with a sickle on her head only once. The other accused beat her with sticks. She said that she sustained bleeding injuries because of the stick blows. She said that she and P.W.4 stayed overnight in one of her relations' house in Gongatipalli. She admitted that neither she nor P.W.4 nor any of her relations came back to their village to know what had happened to the other injured. She said that in the morning, she came to know that the injured were brought to the Government Hospital, Hindupur. She said that she and P.W.4 came to the hospital in a bus and none of her relations accompanied them.

P.W.6 stated that he was present at his house on the fateful day and at 8.00 PM, he heard a galata from the houses of the deceased and P.W.1. Immediately, he rushed there and noticed the presence of A1 to A10, P.Ws.1 and 2 and the deceased at the scene. A2 was armed with a sickle and the other accused were armed with sticks. P.W.3, P.W.4 and P.W.5 were also present at the scene at that time. A1 questioned P.W.1 about the elopement of Srinivasulu and Sasikala and abused them in a drunken state. A1, who was armed

with a stick, beat P.W.1 on his left ring finger resulting in a bleeding injury. When the deceased intervened, A2 hacked him with a sickle on his waist and fore-head resulting in bleeding injuries. The deceased fell down and the other accused beat him with sticks resulting in fracture injuries. P.W.3 intervened and A9 and A10 beat him with sticks on his right chin and left hand resulting in injuries. P.W.3 also fell down. P.W.2 intervened and A6 and A10 beat P.W.2 with sticks on both her hands and head resulting in fracture injuries. P.W.2 also fell down. P.Ws.4 and 5 intervened and A2 hacked them with the sickle resulting in bleeding injuries. The other accused beat P.Ws.4 and 5 with sticks resulting in bleeding injuries. Due to fear, P.Ws.4 and 5 went towards Gongatipalli. A5 and A6 beat him with sticks on his right leg and right thigh resulting in bleeding injuries. Apprehending danger, he also ran away towards the fields. The next day morning at 7.30 AM, he came to the Government Hospital for treatment. He said that he witnessed the incident under the street tube light. In his cross-examination, P.W.6 stated that he did not observe whether he sustained a bleeding injury or not. He said that he noticed that the other injured had sustained bleeding injuries. He however contradicted himself by stating that he did not notice whether P.Ws.1 to 5 sustained bleeding injuries or not and said that he did not specifically observe the bleeding injuries on the persons of P.Ws.1 to 5. He said that P.Ws.1 to 5 fell down because of the injuries sustained by them but he did not try to lift any injured. He said that his house is situated 15 feet away from the scene and that he reached there after P.Ws.3 to 5. He however said that the galata started only after he reached there. The accused also came to the scene immediately after he reached there.

P.W.7 said that on the fateful day at about 8.00 PM, while he was present in his house, he heard a loud galata and cries from the house of the deceased. He immediately rushed there and noticed the presence of all the accused. A2 was armed with a sickle while others were armed with sticks. The deceased, P.W.1, P.W.2, P.W.4, P.W.5 and P.W.6 were also present there. A1 questioned P.W.1 about the disappearance of Srinivasulu and Sasikala and beat P.W.1 with a stick on his left hand ring finger resulting in a bleeding injury. The deceased intervened and A1 asked the other accused to leave P.W.1 and to attack the deceased. A2 hacked the deceased on his waist with a sickle and on his fore-head resulting in hack injuries. The other accused beat the deceased with sticks indiscriminately resulting in fracture injuries. The deceased fell down. In the meantime, P.W.3 intervened and A9 and A10 beat him with sticks on his left hand and right cheek resulting in bleeding injuries. When P.W.2 intervened, A5 and A6 beat P.W.2 with sticks on both her hands and fore-head resulting in bleeding injuries. When P.Ws.4 and 5 went to the rescue, A2 hacked them with a sickle on their heads resulting in bleeding injuries. The other accused also beat P.Ws.4 and 5 with sticks resulting in bleeding injuries. P.Ws.4 and 5 ran away due to life-threat. A5 and A6 beat P.W.6 with sticks resulting in bleeding injuries and P.W.6 also ran away. In the meantime, some villagers gathered there and on noticing them, the accused threw away the sticks at the scene and went away. Somebody informed a 108 ambulance and the injured were taken to the Government Hospital, Hindupur, in the said ambulance. He said that he subsequently came to know that the deceased had succumbed to injuries while undergoing treatment in the hospital. He said that he witnessed the

entire incident under a street tube light. In his cross-examination, P.W.7 said that his house was situated 4 or 5 houses away from the scene of the offence. He said that when he reached the scene, there was an exchange of words between the accused, deceased and P.W.1. He said that when he went to the scene, all the accused and injured were present and he was standing 10 to 15 feet away. The entire incident took place under the street light. He further stated that he did not go under the street light at the time of the incident and did not go to the rescue of P.Ws.1 to 6 and the deceased. He said that P.Ws.1 to 6 were beaten by the accused one after the other and that they were not beaten simultaneously. He further stated that he did not observe whether all the persons received bleeding injuries or not and whether their clothes were blood-stained. He said that 4 or 5 residential houses were near the scene of the offence and some of the inmates of those houses also came there at the time of the incident. He however said that he could not specifically identify those persons. He confirmed that the incident in question happened in front of the house of the deceased. He said that he was standing some distance away from the compound wall of the deceased and did not enter into the compound of the deceased though P.Ws.1 to 6 received injuries and fell down. He said that he did not enter into the compound when the accused left the scene of the offence. He said that he was with the injured till the ambulance came but he did not try to lift the injured into the ambulance.

P.W.8, a witness to the inquest proceedings held on 11.06.2007 at the Government Hospital, Hindupur, from 7.00 AM to 10.30 AM, said that he was thereafter taken by the Circle Inspector of Police along with M.Krishna Murthy (L.W.12) to Gadralapalli, the scene of

the offence, and the police observed it in his presence. He said that he found six sticks thrown at the scene of the offence and also found blood-stained marks there. The police seized six sticks (M.O.2), blood-stained earth, controlled earth under cover of a seizure mahazar (Ex.P3). He stated that he was also present when the police recovered M.O.1 sickle from A2, after he was apprehended. In his cross-examination, P.W.8 admitted that the police did not keep M.O.1 sickle in a sealed cover or secure any initials thereon. He further stated that sickles like M.O.1 were available in the villages. He said that the sticks were found in front of the house of the deceased within the compound.

P.W.10, a Civil Assistant Surgeon at the Government Hospital, Hindupur, conducted the autopsy over the body of the deceased. He detailed the following external and internal injuries found by him:

External injuries:-

1. 8 cms sutured wound over fore head. Fracture frontal bones, depressed type with EDH.
2. 6 x 4 cms contusion over right side of scapular area and posterior aspect of the chest.
3. 5 x 4 cm contusion over left side of scapular area.
4. 3 x 2 cm contusion over right lumbar area.
5. 2 x 1 cm contusion over left lumbar area.
6. 4 x 3 cm contusion over right gluteal area.
7. 4 x 3 cm contusion over left shoulder.
8. Fracture both bones fore arm right side.
9. 6 x 3 cm contusion over right iliac area posterior aspect.
10. Fracture both bones leg right side.
11. Fracture both bones leg left side.
12. Fracture femur right side.

Internal injuries:-

1. Skull: Fracture of frontal bone with ED H depression type.
2. Neck: Hyoid intact. Neck structures normal.
3. Chest: Multiple rib fractures on both sides with hemothorax with collapsed lungs.
4. Abdomen: Stomach contains about 500 ml partially digested food intestines normal.
5. Spleen, Liver, Both kidneys: Normal.
6. Pelvis: Normal.
7. Spine: Normal.

He opined that the deceased died due to shock and haemorrhage caused by the injuries and confirmed that he had died at the Government Hospital, Hindupur, at 11.00 PM on 10.06.2007. He confirmed that external injury No.1 and the internal injuries to the chest were sufficient to cause death of a person in ordinary circumstances. He said that the injuries found on the body of the deceased would be possible with a sickle and sticks. In his cross-examination, P.W.9 stated that external injury Nos.1, 2, 3, 4, 6, 7 and 9 may be caused by a broad based object and external injury No.1 was definitely caused by a hammer as the fracture underneath was a depression type. He further stated that none of the injuries referred to by him above would have been caused by a sharp-edged weapon. He also stated that contusion injuries are possible by falling on a stone and could also be caused by splinters coming as missiles caused due to breakage of stones by hammer. He said that external injury No.1 also could be possible by falling on a stone. He confirmed that external injury No.1 is corresponding to internal injury No.1. External injury Nos.8, 10, 11 and 12 were fractures but there was no corresponding external injury. He said that as there were no contusions or external injuries over the concerned fractures, these fractures were not caused by direct assault and that they could have been caused by indirect pressure or force. He also confirmed that external injury Nos.2 and 3 corresponded to internal injury No.2.

P.W.10, a Civil Assistant Surgeon at the Government Hospital, Hindupur, spoke of his examination of the injured witnesses. He said that on 10.06.2007 at 10.30 PM, he examined P.W.1 and found the following injury:

1. Pain and tenderness in the right fore arm. No bony lesion.
No external injury observed on the body.

He said that the injury would have been caused by a blunt object like a stick. He identified Ex.P6 as P.W.1's wound certificate.

He examined P.W.2 at 10.00 PM and found these injuries:

1. An abrasion of 4 cm x 3 cm in size on the right fore arm.
2. A diffuse contusion of 4 cm x 4 cm in size on the right side of the fore-head.

He said that both injuries were simple in nature and would have been caused with a hard object like a stick. He confirmed that Ex.P7 was P.W.2's wound certificate.

At 10.15 PM, he examined P.W.3 and found these injuries:

1. A diffuse contusion of 5 cm x 4 cm in size right side mandible, reddish in colour.
2. An abrasion on the left hand on the dorsal side 1 cm x 1 cm in size.

He said that the X-ray showed that P.W.3 had a fracture of the 5th metacarpal bone on the left hand. He said that injury No.1 was simple in nature, while injury No.2 was grievous. The injuries could have been caused with blunt objects like sticks. He confirmed that Ex.P8 was the wound certificate of P.W.3.

He examined P.W.4 on 11.06.2007 at 8.30 AM and found the following injuries:

1. An abrasion on the right fore arm 3 cm x 2 cm in size, reddish brown in colour.
2. A lacerated injury of 4 cm x 1 cm x 0.5 cm in the occipital area.
3. A lacerated injury of 3 cm x 1 cm x 0.5 cm in depth in the middle of the shoulder.

He said that injury No.1 was simple in nature and would have been caused by a stick. He said that injury Nos.2 and 3 could be possible with hard objects like sticks and any blunt object, such as the reverse portion of a sickle. Injury No.1 could be possible by dragging on a hard surface. He confirmed that Ex.P9 was the wound certificate of P.W.4.

On the same day, i.e., on 11.06.2007 at 8.45 AM, he examined P.W.5 and found the following injury:

1. A lacerated injury of 4 cm x 1 cm x 0.5 cm on the left parietal bone.

He said that the injury was simple in nature and could have been caused with a blunt or hard object such as sickle or rod. He confirmed that Ex.P10 was the wound certificate of P.W.5.

In his cross-examination, P.W.10 said that he could not say whether P.W.1 really had any pain or not. As regards P.W.2's wounds, he said that abrasions, as a rule, would be possible on coming into contact with a rough surface and the abrasion referred to in Ex.P7 wound certificate was also possible by contact with a rough surface. He said that such an abrasion would be possible if a person is dragged on a hard surface by folding legs. He said that a diffuse contusion means swelling and the same would be possible and probable by coming into contact with a hard surface. He said that there was a possibility of a contusion injury, as referred to in Ex.P7, by pressing with a hard or blunt object. He said that the injuries referred to in Ex.P7 could be possible by a fall on the ground or hitting with a hard object. Injury No.2 in Ex.P7 could be possible and would also be more probable by hitting on a wall with a hard surface. He confirmed that no teeth of P.W.3 were damaged and if a forcible blow was given to the right mandible, there could be damage to the teeth, depending upon the force. He said that the injury sustained by P.W.3 was not due to a hard blow but swelling was there. He said that if a person accidentally hits against a wall, injury No.1 referred to in Ex.P8 wound certificate would be possible. He also said that injury No.2 in Ex.P8 would be possible by a fall on the ground. According to him, the injury referred to in Ex.P9 wound certificate is

possible by contact with a hard surface. He however denied that injury Nos.2 and 3 in Ex.P9 wound certificate would be possible by a fall on a hard surface. He added that if a person falls on the back, injury Nos.2 and 3 could be caused. He added that lacerations could not be caused with a sharp-edged weapon but could be caused by the reverse side of a sharp-edged weapon. As regards Ex.P10 wound certificate, he said that the injury referred to therein is possible by falling from a certain height. He said that the said injury would not be possible with a sharp-edged weapon. He confirmed that the ages given in Exs.P6 to P10 wound certificates were his own approximations and the margin on either side could be 4 or 5 hours.

P.W.11, the Sub-Inspector of Police, Chilamathur Police Station, stated that he received information at about 11.00 PM on 10.06.2007 about the incident and that the injured were taken to the Government Hospital, Hindupur, and he immediately rushed there at 00.30 hours on 11.06.2007. He recorded Ex.P1 statement from P.W.1 and rushed back to Chilamathur Police Station and registered Crime No.32 of 2007 at 01.45 hours on 11.06.2007 under Sections 147, 148, 324 and 302 IPC read with Section 149 IPC. Ex.P11 is the FIR. In his cross-examination, P.W.11 stated that except recording Ex.P1, he did not examine any witnesses or record their statements. He said that he received a phone message from I Town Police Station, Hindupur, about the injured being admitted in the Government Hospital, Hindupur, while he was present in Chilamathur Police Station at 11.00 PM on 10.06.2007. He said that when he reached the hospital at Hindupur, he found ten members of Gadralapalli present there. He denied the suggestion that Ex.P11 FIR came into existence after due deliberations and consultations. He however

admitted that the Judicial First Class Magistrate concerned received Ex.P11 FIR only at 8.00 AM on 11.06.2007.

P.W.12, the Circle Inspector of Police, Hindupur, stated that on 11.06.2007 at about 1.00 AM, he received a phone call from P.W.11. He visited the Government Hospital, Hindupur, at 1.45 AM and found P.W.1, P.W.2, P.W.3, P.W.4 and P.W.5 and the dead body of Subbaramappa. At about 3.45 AM, he received a copy of Ex.P11 FIR from P.W.11. He held an inquest over the body of the deceased from 7.00 AM to 10.00 AM. Ex.P2 is the inquest panchanama. During the inquest proceedings, he examined P.W.1, P.W.2, P.W.3, P.W.4, P.W.5, P.W.6, Ramachandrappa (L.W.7), Punyavathamma (L.W.8) and Vadde Sudhakar and recorded their statements. He left Hindupur at about 11.00 AM and reached Gadralapalli, where he examined the scene of the offence in front of the house of P.W.1 on the road side. Ex.P12 is the rough sketch thereof. He seized the blood-stained earth, controlled earth and six sticks at that time, under Ex.P3 observation mahazarnama. He examined P.W.7 on 12.06.2007 and recorded his statement. Upon receiving credible information, he arrested A2, A3, A8 and A9 on 13.06.2007 in the presence of mediators. A2 was found with M.O.1 sickle in his possession, which was seized under Ex.P4 mahazarnama. On 19.06.2007, he arrested the remaining accused. Seized material was sent to the laboratory for examination. Ex.P13 is the letter of advice and Ex.P14 is the Forensic Science Laboratory report from Tirupathi. After completion of the investigation, he laid a charge sheet against the accused. In his cross-examination, P.W.12 stated that one of the injured witnesses accompanied him to show the scene of the offence but he could not give his name. He admitted that he had not even mentioned the same in his case diary. He said

that the scene of the offence was shown by the side of the road in front of the house of P.W.1. According to him, the scene of the offence was situated adjoining the house of P.W.1. M.O.2 sticks were seized in front of the house of P.W.1. The electric light pole was stated to be situated by the side of the tar road in the village. He asserted that on the information given by P.W.11, he visited the Government Hospital, Hindupur, at 1.45 AM on the intervening night of 10/11.06.2007 and was present in the hospital till 3.45 AM.

Upon considering the aforesaid evidence, the Sessions Court believed the alleged eye-witnesses. The accused were accordingly convicted on all charges and sentenced, leading to this appeal.

Heard Sri A.Hanumantha Reddy, learned counsel for the appellants/accused, and the learned Public Prosecutor, State of Andhra Pradesh, and considered the material on record.

Though Sri A.Hanumantha Reddy, learned counsel, would rely upon various lapses committed by the police in the course of the investigation of the case, we are of the opinion that the same do not have a fatal effect on the prosecution's case. Maintenance of case diaries, seizure of material objects, manner of registration of the FIR, drawing of rough sketches, etc., are important steps, no doubt, in the course of the investigation, but when the case rests on eye-witness testimony and not on circumstantial evidence, such lapses may not, in themselves, be sufficient to disbelieve the prosecution's case.

That having been said, it may be noted that though P.Ws.1 to 6 are projected as injured eye-witnesses, there are several crucial inconsistencies in their versions which dilute the claim that all of them actually witnessed the attack upon the deceased and the further claim that all of them sustained injuries in that process.

Ex.P1 complaint given by P.W.1 at 00.30 hours on 11.06.2007 to P.W.11 at the Government Hospital, Hindupur, reads to the effect that P.W.1 was with his Viyyankudu (Sambandhi) at around 8.00 PM on 10.06.2007 outside his house when A1 to A4 came there, followed by A5 to A10. As per this statement, it is not clear as to who was the Sambandhi who was with P.W.1 and it appears that it was only after A1 beat P.W.1 on his left hand ring finger with a stick that the deceased came there upon hearing the galata. Further, as per Ex.P1, the accused fled from the scene when P.W.4, V. Ramachandrappa (L.W.7) and Gangadharappa came and separated them. As per Ex.P1, only P.Ws.1 to 3 and the deceased suffered injuries in the attack.

Further, though all the eye-witnesses took great trouble to corroborate each other on the specific details of the injuries suffered by each of them, the medical evidence did not support the same. For instance, all the witnesses consistently spoke of P.W.1 being hit by A1 with a stick upon his left hand ring finger resulting in a bleeding injury. This was stated to be the first injury caused in the attack and was also mentioned in Ex.P1. However, the medical evidence showed that P.W.1 did not suffer any such injury and all that the doctor (P.W.10) found was that P.W.1 had pain and tenderness in his right fore-arm. No other external injury was observed on his body and more particularly, the left hand. Further, the medical evidence completely undermined the version put forth by all the eye-witnesses that P.W.1 was beaten all over the body with sticks.

In this regard, reference may be made to the recent decision in **MAHAVIR SINGH V/s. STATE OF MADHYA PRADESH²**, wherein the Supreme Court was dealing with a case where the trial Court

² (2016) 10 SCC 220

acquitted the accused on the ground that there were contradictions between the evidence of eye-witnesses and the medical evidence. It was observed that the position of law as to contradiction between medical evidence and ocular evidence can be crystallised to the effect that the ocular testimony of a witness has greater evidentiary value *vis-à-vis* medical evidence, when medical evidence makes the ocular testimony improbable. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved. Reliance was placed on the decision in **ABDUL SAYEED V/s. STATE OF M.P.**³.

Earlier, in **SRI NIWAS V/s. RAM BHAROSEY**⁴, the Supreme Court was dealing with a case where the High Court found that the evidence of eye-witnesses appeared to be consistent but it was not consistent with the medical evidence creating a doubt as to the real manner in which the incident happened. The Supreme Court affirmed that once it was found that eye-witnesses did not give the correct account of how the incident had taken place, such evidence must be discarded, even though it was consistent otherwise.

RAM NARAIN V/s. THE STATE OF PUNJAB⁵ was also a case where the evidence of the eye-witnesses was totally inconsistent with the medical evidence and the evidence of the ballistic expert, resulting in a fundamental defect in the prosecution's case.

In **DAYAL SINGH V/s. STATE OF UTTARANCHAL**⁶, the Supreme Court observed that a complete contradiction or inconsistency between the medical evidence and the ocular evidence, on the one hand, and the statement of the prosecution witnesses

³ (2010) 10 SCC 259

⁴ AIR 1994 SC 1539

⁵ AIR 1975 SC 1727

⁶ (2012) 8 SCC 263

between themselves, on the other, may result in seriously denting the case of the prosecution in its entirety. Reference was made to **KAMALJIT SINGH V/s. STATE OF PUNJAB**⁷, wherein it was observed that minor variations between the medical evidence and ocular evidence do not take away the primacy of the latter and unless medical evidence goes so far as to completely rule out all possibility whatsoever of injuries taking place in the manner stated by the eye-witnesses, their testimony cannot be thrown out.

In **DARBARA SINGH V/s. STATE OF PUNJAB**⁸, dealing with the question of inconsistency between medical and ocular evidence, the Supreme Court again observed that the law is well settled that, unless the oral evidence available is totally irreconcilable with the medical evidence, the oral evidence would have primacy and in the event of contradictions between medical and ocular evidence, the ocular testimony of a witness would have greater evidentiary value *vis-à-vis* medical evidence and only when medical evidence makes the oral testimony improbable, the same becomes a relevant factor in the process of evaluation of such evidence. For the purpose of evaluation of such evidence, the Supreme Court held that it is only when the contradiction between the two is so extreme that the medical evidence completely rules out all possibility of the ocular evidence being true at all, that the ocular evidence is liable to be disbelieved. Reference in this regard was made to **STATE OF U.P. V/s. HARI CHAND**⁹ and **BHAJAN SINGH V/s. STATE OF HARYANA**¹⁰.

In the light of the aforesaid case law, when there is absolutely no medical evidence to support the version that P.W.1 suffered an

⁷ (2003) 12 SCC 155

⁸ (2012) 10 SCC 476

⁹ (2009) 13 SCC 542

¹⁰ (2011) 7 SCC 421

injury on his left hand ring finger and the medical evidence, in fact, refutes any such possibility, the claim of all the eye-witnesses to that effect smacks of tutoring. Further, the details of the so-called attack upon the deceased also do not find support in the medical evidence. According to all the eye-witnesses, A2 attacked him with a sickle (M.O.1). This weapon was not even shown to P.W.9, the doctor who conducted the post-mortem examination of the body of the deceased. He categorically asserted that the first external injury, being a fracture of the frontal bone, could have been caused only by a hammer. He confirmed that this injury was definitely caused by a hammer as the fracture underneath was a depression type fracture. As to how a sickle could have been used as a hammer is not explained and no question was put to P.W.9 as to whether any part of a sickle could have been used in such a manner. The attribution of this injury on the deceased to A2 is rendered doubtful. The ocular evidence is therefore clearly outweighed by the medical evidence.

In this regard, reference may be made to **BHOLA SINGH V/s. STATE OF PUNJAB¹¹**, wherein the Supreme Court was dealing with a case where the deceased had suffered injuries from a blunt weapon as per the post-mortem and such injuries would not have been possible with a Gandasa, which was cited as the weapon used by the accused as per the eye-witnesses. The Supreme Court observed that it is highly improbable and unlikely that when the accused was armed with a weapon like a Gandasa, he would have used the blunt-edged side and not the sharp-edged side of the said weapon. It was therefore held that the eye-witnesses' version gave rise to a serious doubt as to their presence at the time of the incident.

¹¹ AIR 1999 SC 767

Earlier, in **HALLU V/s. STATE OF M.P.**¹², the eye-witnesses said that the attack was with lathis, spears and axes but the medical evidence did not support it. The High Court refused to attach importance to this discrepancy assuming that the axes and spears must have been used on the blunt side and, therefore, the evidence of the eye-witnesses could be accepted. The Supreme Court observed that normally when a witness says that an axe or a spear is used, there is no warrant to suppose that the witness meant that the blunt side of the weapon was used. The Supreme Court further observed that it is the duty of the prosecution to obtain a clarification from the witness as to whether a sharp-edged instrument was used as a blunt weapon. Applying this principle, there is no explanation for injury No.1 on the deceased which could only have been inflicted by a hammer but the weapon used, as per all the eye-witnesses, was a sickle, which they said was used to 'hack' the deceased.

Viewed thus, manipulation of the case by the police so as to strengthen it against the accused is apparent. The endeavour to cook up more eye-witnesses is also clearly manifest, as will be explained hereinafter. **In re GADDAM JAYARAMI REDDI**¹³, a Division Bench of this Court observed that it is regrettable that in spite of repeated warnings against dishonest practices and emphasising the need to carry on investigation honestly some investigating officers persist in dubious methods and opined that such officers must realise that by tampering with evidence, they are interfering with a fair trial.

Long thereafter, in **SUNIL KUNDU V/s. STATE OF JHARKHAND**¹⁴, the Supreme Court rejected the argument of the

¹² AIR 1974 SC 1936

¹³ AIR 1959 AP 325

¹⁴ (2013) 4 SCC 422

State that minor contradictions and inconsistencies which do not go to the root of the prosecution version should be ignored, as major lacunae in the prosecution's story were found. Three of the important prosecution witnesses were found to be not truthful as their presence itself was doubtful. The Supreme Court observed that the genesis of the prosecution's case was suppressed and reliance was placed on **KAPILDEO MANDAL V/s. STATE OF BIHAR**¹⁵, wherein it was held that while appreciating variance between medical evidence and ocular evidence, oral evidence of eye-witnesses has to be given priority as medical evidence is basically opinionative, but when the evidence of the eye-witnesses is totally inconsistent with the evidence given by the medical experts, then such evidence is to be appreciated with a different perspective. It was observed that when medical evidence specifically ruled out the injury claimed to have been inflicted as per the eye-witnesses' version, then the Court can draw an adverse inference that the prosecution version is not trustworthy.

This being one viewpoint, the judgment of the Supreme Court in **KARNEL SINGH V/s. STATE OF M.P.**¹⁶ casts light on the other point of view. That was a case where it was found that the investigating officer had not taken the care expected of him but despite the fact that the investigation was casual and defective, the Courts below had recorded a conviction. The Supreme Court observed that in cases of defective investigation, the Court must be circumspect in evaluating the evidence but it would not be right in acquitting an accused 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

¹⁵ (2008) 16 SCC 99

¹⁶ (1995) 5 SCC 518

defective, and to acquit solely on the ground of defective investigation would be adding insult to injury.

It would therefore be necessary for this Court to balance both these perspectives while dealing with the case on hand.

Significantly, though the eye-witnesses took great pains to parrot, by rote, the injuries sustained by each and every one of them, the same trouble was not taken to corroborate each other as to the place of the attack. P.W.1 said that it did not happen within the compound of the deceased. P.W.2, at one stage, said that the attack occurred within the compound of her house but contradicted herself by saying thereafter that the incident happened on the mud road under the street light, in between the tar road and the cement road. P.W.3 also stated in the first instance that it occurred outside the compound wall and then claimed otherwise. P.W.4 claimed that it did not happen within the compound and P.W.5 said that it happened outside the house of the deceased under the street light. P.W.7 deposed to the effect that the incident occurred within the compound. According to P.W.8, the sticks (M.O.2) were found in front of the house of the deceased, within the compound. This fact demolished the version put forth by the so-called eye-witnesses that the incident took place outside the compound wall and that the accused threw their sticks at the scene of the offence when they left. P.W.4 stated that he heard cries from the house of the deceased for about 10 minutes before he went there. However, all the witnesses claimed to have been present right from the commencement of the attack upon P.W.1 by A1 with a stick and with great precision, they all detailed the attack on each of them. So much so, that P.W.7 went to the extent of stating that P.Ws.1 to 6 were beaten by the accused 'one

after the other' and the accused did not 'beat them simultaneously'. This is also highly implausible as each of the eye-witnesses would not have stood by, patiently waiting for their turn, while the accused finished their attack on the victims, one by one. Though all of them spoke of bleeding injuries, the wound certificates and the evidence of the doctor (P.W.10) demonstrates that no such bleeding injuries were found, as claimed by all these so called injured eye-witnesses.

According to P.W.3, it was only after the attack upon P.W.2 that P.Ws.4, 5 and 6 came there. He said that the incident occurred under the street light in between the house of P.W.1 and the deceased, i.e., in front of the house of the deceased outside the compound wall. However, he contradicted himself thereafter by saying that he was present in front of the house of the deceased and witnessed the incident within the compound wall. He further stated that the incident happened between the compound wall of the deceased but not on the road. According to P.W.10, P.W.3 suffered a contusion on the right mandible and abrasion on the left hand on the dorsal side and had suffered a fracture on the fifth metacarpal bone on the left hand, which were the injuries claimed by P.W.3 to have been suffered in the course of the attack. However, given the fact that owing to the intervening manipulation by the police, he kept changing his version from stage to stage, including the scene of the actual attack, his evidence does not commend credibility.

Similar is the case with P.W.2, the wife of the deceased. She also spoke of P.W.1 sustaining a bleeding injury on his left ring finger. According to her, her husband intervened after P.W.1 suffered this injury and A1 asked the other accused to leave P.W.1 and to kill her husband. She confirmed that A2 hacked her husband on his

fore-head with M.O.1 sickle resulting in a bleeding injury. No mention was made by her of the sickle being turned around so as to use the handle as a hammer. She spoke of the attack upon P.W.3 with sticks by A9 and A10 who were stated to have beaten him with sticks and also on his right cheek. This injury found mention in Ex.P8 wound certificate of P.W.3. She further confirmed that A5 and A6 beat her with sticks on her left hand and right fore-arm. She however did not suffer any fractures as claimed by her. A5 was stated to have beaten her on her fore-head resulting in a bleeding injury. This injury stands confirmed to some extent by Ex.P7 wound certificate, wherein a mention was made of a diffuse contusion on the right side fore-head of P.W.2. Again, clear attempts at embellishment and exaggeration by this witness dilute her trustworthiness.

P.W.1, the crucial injured eye-witness, also parroted the concocted version forced upon him by the police. Further, his claim of suffering a non-existent injury on his ring finger discredits him.

The presence of P.Ws.4, 5 and 6 at the scene during the attack and being injured in the course thereof, as claimed, is extremely doubtful. P.Ws.4 and 5 claimed that they were attacked but ran away from the scene and they did not even return or file a police complaint but calmly spent the night at the house of a relation of P.W.5 at Gongatipalli. This was their story, notwithstanding the fact that P.W.4's father (P.W.3) and P.W.5's father (P.W.1) were injured victims and had admittedly collapsed on the road while they themselves fled. This detachment on their part and lack of concern for their respective fathers is highly unbelievable. That apart, as per Ex.P1, P.W.4 was instrumental, along with others, in breaking up the fight. As per P.W.12, when he went to the hospital on 11.06.2007, between 1.45

AM and 3.45 AM, P.Ws.4 and 5 were both present there This statement is sufficient to demolish the version put forth by P.Ws.4 and 5 to the contrary. Surprisingly, P.W.6, who also claimed to be an injured eye-witness, was not even examined by a doctor.

Given the fact that this incident allegedly occurred at 8.00 PM on 10.06.2007, registration of the FIR only at 1.45 AM on 11.06.2007, followed by receipt thereof by the Magistrate concerned at 8.00 AM on 11.06.2007, indicates there was ample scope for deliberation, consultation and manipulation of the case by the police. This suspicion is fortified by the fact that P.W.11 admitted that he received information from I Town Police Station, Hindupur, about the injured being admitted in the hospital at 11.00 PM but he did not inform the Inspector of Police, P.W.12, till much later. Further, he went to the Government Hospital, Hindupur, at about 00.30 hours on 11.06.2007 and having secured Ex.P1 complaint from P.W.1, he went back to Chilamathur Police Station to register the case. Even at that stage, he claims that he did not inform P.W.12. This conduct on the part of the police raises suspicion. Significantly, P.W.1 let it out that P.W.11 came to the hospital on that night at 10.00 PM itself and not at 12.30 AM, as claimed by P.W.11. This also confirms that the version put forth by the police is not truthful.

According to P.W.12, the inquest over the body of the deceased was conducted from 7.00 AM to 10.00 AM on 11.06.2007 at the Government Hospital, Hindupur. However, P.W.10, the doctor, confirmed that he examined P.W.4 at 8.30 AM and P.W.5 at 8.45 AM on 11.06.2007. When P.Ws.4 and 5 were shown as witnesses in the inquest, which commenced at 7.00 AM and concluded at 10.30 AM, it is doubtful as to whether they would have been allowed to leave

during the proceedings so as to undergo examination by P.W.10. Be it noted, the entire family is stated to be involved in stone-cutting activity and the injuries so-called found on P.Ws.4 and 5 could easily be attributed to such activity. P.W.10 confirmed that their injuries were simple in nature. He also confirmed that he could not pinpoint exactly as to when such injuries were suffered by them.

The alleged motive for the attack upon the deceased also defies comprehension. According to all the family members, there was no enmity between their family and the accused prior thereto and it was only because of the elopement of P.W.1's son with A1's sister-in-law that ill-feelings arose between them. This was stated to be the only reason for the attack. If that were so, the ill-feelings and animosity of A1 and his group, if any, would have been much more against P.W.1, the father of Srinivasulu who had eloped with A1's sister-in-law. The deceased, being the father-in-law of Srinivasulu, would also be an aggrieved party as his daughter was left high and dry by the elopement of her husband with A1's sister-in-law. The version put forth by the eye-witnesses that when the deceased interfered, A1 instigated A2 and the others to leave P.W.1 and to kill the deceased therefore defies logic. No evidence was let in of any prior animosity between the accused and the deceased. If the elopement of Srinivasulu with Sasikala was the only motive for the attack, concentration of the accused upon the deceased leaving aside P.W.1, the father of Srinivasulu, does not appear rational.

Consideration of the ocular and medical evidence leads to a strong possibility that P.Ws.1 to 3 were actual eye-witnesses and suffered injuries in the course of the attack upon the deceased. However, given the various contradictions and inconsistencies in the

evidence of these actual eye-witnesses, it is clear that the genesis and origin of the incident was suppressed by the prosecution. The thrust of the attack seems to have been only upon the deceased, as he suffered the maximum number of injuries. However, the version put forth by the prosecution was that P.W.1 was attacked in the first instance and when the deceased intervened, A1, the brother-in-law of Sasikala, turned his ire upon the deceased and instigated all the accused to leave P.W.1 alone and to kill the deceased. As this version is not even logical, it is clear that the actual reason for the attack on the deceased is being withheld

No doubt, the maxim '*Falsus in uno, falsus in omnibus*' (false in one thing, false in all) does not have application in India and it is the responsibility of the Court to sift through the evidence so as to find the truth. In **UGAR AHIR V/s. STATE OF BIHAR**¹⁷, it was observed that the maxim *falsus in uno, falsus in omnibus* is neither a sound rule of law nor a rule of practice as one hardly ever comes across a witness whose evidence does not contain a grain of untruth or, at any rate, exaggerations, embroideries or embellishments. It was further observed that it is the duty of the Court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff but it cannot obviously disbelieve the substratum of the prosecution's case or the material parts of the evidence and reconstruct a story of its own out of the rest.

Again, in **JAKKI V/s. STATE**¹⁸, the Supreme Court observed:

'the maxim *falsus in uno, falsus in omnibus* ... has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution.

¹⁷ AIR 1965 SC 277

¹⁸ (2007) 9 SCC 589

All that it amounts to is that in such cases testimony may be disregarded, and not that it must be discarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called “a mandatory rule of evidence”.’

Thereafter, in **STATE OF U.P. V/s. M.K.ANTHONY**¹⁹, the Supreme Court observed as under:

‘While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross-examination is an unequal duel between a rustic and refined lawyer.’

¹⁹ (1985) 1 SCC 505

Relying on the aforesaid extract, the Supreme Court in **STATE REPRESENTED BY INSPECTOR OF POLICE V/s. SARAVANAN**²⁰ observed that it has been said, time and again, that while appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecution's case, ought not to prompt the Court to reject the evidence in its entirety. It was further observed that on the general tenor of the evidence given by the witness, the trial Court, upon appreciation of such evidence, forms an opinion about the credibility thereof and in normal circumstances, the appellate Court would not be justified in reviewing it without valid reasons. The Supreme Court pointed out that it is the totality of the situation which has to be taken note of and differences in some minor detail, which do not otherwise affect the core of the prosecution's case, even if present, would not prompt the Court to reject the evidence.

However, in **MOHINDER SINGH V/s. THE STATE**²¹, the Supreme Court observed that in a case where death is due to injuries caused by a lethal weapon, it is the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they were alleged to have been caused. It was observed that it is elementary that where the prosecution has a definite or positive case, it must prove the whole of it.

Again, in **BALAKA SINGH V/s. STATE OF PUNJAB**²², the Supreme Court observed that though the Court must make an attempt to separate grain from the chaff, truth from the falsehood,

²⁰ (2008) 17 SCC 587

²¹ AIR 1953 SC 415

²² (1975) 4 SCC 511

yet this could only be possible when the truth is separable from the falsehood. However, where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that, in the process of separation, the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply.

In the light of this authoritative edict, it is not permissible for the Court to concoct a new case altogether for the prosecution in the course of separating the chaff from the grain while analyzing the evidence of partly truthful witnesses. All the more so, when it is clear that the prosecution has deliberately tampered with the case, whereby the origin and genesis of the occurrence are suppressed, leading to the irresistible conclusion that the prosecution did not come out with the true version of the occurrence. (See **KAPILDEO MANDAL**¹⁵, **LAKSHMI SINGH V/s. STATE OF BIHAR**²³ and **MOHAR RAI V/s. STATE OF BIHAR**²⁴).

Presently, we find that the medical evidence unquestionably outweighs the ocular evidence. The actual eye-witnesses were clearly tutored and the planted eye-witnesses further diluted their testimony. The motive for the attack upon the deceased was withheld by the witnesses. The prosecution, in effect, suppressed the genesis and origin of the occurrence. This Court would therefore have to come up with a new case for the prosecution by undertaking evaluation of the testimonies of the actual eye-witnesses, which is

²³ AIR 1976 SC 2263

²⁴ AIR 1968 SC 1281

clearly impermissible in law. We can only respectfully empathize with the sentiments expressed by the Supreme Court in **SUNIL KUNDU¹⁴**:

‘.....We are distressed at the way in which the investigation of this case was carried out. It is true that acquitting the accused merely on the ground of lapses or irregularities in the investigation of a case would amount to putting premium on the deprecable conduct of an incompetent investigating agency at the cost of the victims which may lead to encouraging perpetrators of crimes....’

On the above analysis, we are constrained to hold that the prosecution failed to prove the guilt of the accused in respect of all the charges as it deliberately resorted to suppression of the genesis and origin of the occurrence and did not put forth the true version of what had actually happened. The benefit of doubt would therefore have to be given to the accused.

The appeal is accordingly allowed and the judgment in Sessions Case No.194 of 2008 of the learned Additional Sessions Judge, Hindupur, holding to the contrary is set aside. As the appellants/accused were enlarged on bail during the pendency of this appeal, they shall report before the Superintendents of the prisons where they were incarcerated for completion of necessary formalities in the light of their acquittal. Bail bonds furnished by them at the time of securing bail in this appeal shall stand discharged.

SANJAY KUMAR, J

A. SHANKAR NARAYANA, J

27th OCTOBER, 2017

L/R copy to be marked - Yes
B/o Svv