Supreme Court of India D.V. Shanmugham & Anr vs State Of Andhra Pradesh on 25 April, 1997 Author: Pattanaik Bench: G.N. Ray, G.R. Pattanaik PETITIONER: D.V. SHANMUGHAM & ANR.

Vs.

RESPONDENT: STATE OF ANDHRA PRADESH

DATE OF JUDGMENT: 25/04/1997

BENCH: G.N. RAY, G.R. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT: Present Hon'bleMr. Justice G.N. Ray Hon'bleMr. Justice G.B. Pattanaik K. Parasaran, Sr. Adv., V. Krishnamurthy, Adv.with him for the appellants Mrs. K. Amreshwari, Sr. Adv.,G. Prabhakar, Adv. with her for theRespondent The following Judgment of the Court was delivered: JU D G ME N T PATTANAIK, J. The appealis directed against thejudgment of the-High Court of Andhra Pradesh dated15th April, 1994 in Criminal Appeal no. 695of 1993arisingout of SessionsCase No. 251 of having committed several offences and weretried by the Additional Sessions Judge, Chittoor at Tirupati and by judgment dated9th July, 1993all ofthem were convicted under different sections of the penal Code. All ofthem except A-2 wereconvicted underSection302/149IPC andwere sentenced to imprisonment for life. They were also convicted under Section 148 andsentenced to imprisonment for one year, under section307/149 theywere sentenced to imprisonment for five years and under-Section324/149were sentenced to imprisonment forone year, all the sentences have been directed torun concurrently. A-2 was convicted under Section 302 for causing murder ofMohan and Sekhar and was sentenced to imprisonmentfor life, convicted under Section307 and sentenced or rigorous imprisonment for 5 years and a fine of Rs. 200/- in a default imprisonment for 2 months convicted under Section 324IPC andsentenced to imprisonment of one year, and324/149IPC andsentenced to imprisonment for one year, sentences torun concurrently. In appeal,the High Court by the impugned judgment set aside the conviction of accused Nos. 3, 4 and5 and acquittedthem of allthe charges. The HighCourt Also set aside the Conviction andsentence of accused No. 1 under Sections 148,307/149 and 324/149 IPC. His conviction under Section 302/149 was modifiedto one undersection 302/34 and sentence of imprisonment for lifewas confirmed. His conviction under Section 324 for causing hurt to PW-2 was also maintained. so far as accused no. 2 is concerned the High Court confirmed the conviction and sentence passed by the learned Sessions Judge for the offence under Sections 302 and 307 IPC. His conviction under Sections 148 and 324/149and thesentence passedthereunder was set aside and thus the present appeal. The prosecution case innutshell is that all the accused persons belong to village Dasarimatam and the complainant party belong to the same village. Some incident had happened between the two groups on 6th May, 1990 in respectof which a complainant had been lodged by accused No.1. on account of

the Same there was ill feeling between the two groupsand on the date ofoccurrence on22nd September, 1990at 8.00P.M. when one Natarajanwas coughing on account of his feverthe accused No.1 was passing bythat road on his scooter. He tookthis to be a taunting, and therefore, brought hisbrother accused No.2 and picked up quarreland challenged him. Said Natarajan was a relation of the complainant. Shortly thereafter at 10 P.m. the complainant PW1 and the deceased - Mohan were returning from a theatre and whenthey had reached the house of one V. Murli the fiveaccused persons formed themselves into an unlawful assembly andattacked the complainant and the deceased with deadly weapons. While accused No.1 caughthold of deceased-Mohan accused No.2 stabbed him with a knife on the abdomen and Mohan fell down wounded. When the complainant, PW-1 intervened he was also stabbed with a knife by accused No.2on hisleft hand and accusedNo.1 dealt a blow with a stick onthe right hand. PW-1then raised an alarm and on hearing the cries his relatives including Sekhar who isthe other deceased cameout of their houses and rushed towards Mohan. Thefive accused persons then also attacked these people andwhile accusedNo.3 caught hold ofSekhar, accused No.2 stabbed him with knife on hisabdomen and caused fatal injury. These accused personsmore particularly accused No.4 and 5 hurled stones which caused injury tothe member of the complainant group. AccusedNo.1 also stabbed one Ravi Kumar with aknife on his left elbow, asa result of which said Ravi Kumar was injured. The injured persons were taken to thehospital for treatment and Mohan died during the midnight on account of shock and haemorrhage as a result of the injuries sustained by him. The sub-Inspector of Police, East PS,on receiving the information about the incident rushed tothe hospital and recorded the statement of injured Sekhar at5 a.m. on 23 rd September,1990 and Sekhar ultimately died in the Hospital on 24th September, 1990 p.m. On the basis of information given by PW-1 the investigation proceeded and on completion ofinvestigation charge sheet was submitted againstthe five accused persons as already stated and on being committedthey stood their trial. The prosecution to establish thecharges against the accused persons examined asmany as 23 witnesses and exhibited a large number of documents. The defence did not examine any witnessbut exhibited several documents including the former statementsof the prosecution witnesses recorded underSection161 Cr.P.C. for the purpose of contradicting them during thecourse of their examination during trial. The learned Sessions Judge on scanning the evidence on record came to the conclusion that the prosecution witnesses are reliable and basing upon their testimony convicted the accused persons and sentencedthem as already stated. The High Court, however, in the appeal reappreciated the evidence led by theprosecution andcame to theconclusion that the prosecution has been able to establish the charge beyond reasonabledoubt with regard to the role played by accused No.1 and 2for causing injuries to deceased - Mohan on account of which Mohan ultimately died. But so far as theinjuries causedon Sekhar though the prosecution hasbeen able to establish the roledescribed by accusedNo.2 on that score butthe role ascribed to accused No.3 and 5 have not been established beyond reasonable doubt. In otherwords, the HighCourt discardedthe evidence of the eye-witnesses sofar as they ascribed different parts

played by accused No.3, 4 and 5 in formingthe alleged unlawful assembly and in assaulting the complainant party essentially because none of them in their earliest version to thepolice and implicated these accused persons. Having come to the aforesaidconclusion theHigh Court heldthat none of the charges against accused No.3, 4 and 5 can be said tohave been established by the prosecution and assuch they were acquitted of the charges. But relying upon the evidence of the self-same prosecutionwitnesses theHigh Courtcame tohold that the role ascribed toaccusedNo.1 and 2 in causing injuries on deceasedMohan and Sekhar may be held to have been established beyond reasonable doubt, and therefore, convicted A-2 under Section 302 IPC and A-1 under Section 302/34 IPC. TheHigh Court also convicted these accused 1and 2 who are the appellants in this appeal under Section 324 IPC of causing hurt to PW-2 andPW-1 respectively and further convictedaccused No.2 under Section307 IPCfor attempting to commit the murder of PW-7. It may be stated that the High Court gave a positive finding on reappreciating the evidencethat accused No.4 and 5have not Pelted stones as narratedby the prosecution witnesses an this finding will have vital bearing in deciding the presentcriminal appeal. It may alsobe stated that the state has not preferred any appeal against theacquittal of accusedNo.3, 4 and 5which order of acquittal hasthus become final. Mr. K. Parasaran,the learned senior counsel appearing for the two appellants arguedwith emphasis that no doubt two persons Mohan andSekhar have died in the course of occurrence butthe prosecution story as unfolded through a number of prosecution witnesses who are alleged to be the eye-witnesses to the occurrence is not the correct version and theprosecution is guilty of suppressing the genesis and the origin of the occurrence in asmuchas no explanation has been offeredfor the injuries sustainedby the two appellants as well as their father Subramanium,more particularly, the injuries onthe head of accused No.1 on accountof which the said accused had multiplestitches and was required to be removed toNeurological Surgical Centre and the injuryis grievous in nature, Mr. K. Parasaran furtherarguedthat the prosecutionis also guilty of shifting theplace of occurrencein asmuchas though according tothe prosecution witnesses the incident including the stabbingof Mohan and Sekhar took place in front of the house of accused Murli but the blood and blood stainedstone could be recovered from the Veranda of one Mr. Reddy which isfar away from the houseof accused Murli and the prosecution is totally silent as to how such blood and blood stained stone could be recovered from the Veranda of Shri Reddy. Mr. K Parasaran also contented that all the prosecution eye-witnesses are related to each other andthey have repeated the version in the same mannerand theonly independent witness PW-10 didnot support the prosecution case atall andin suchcircumstances when other independent witnesses wereavailable as narratedby the prosecution witnesses themselves, nonexamination ofsuch other independent witnesses availableaffectsthe prosecutioncase also. Mr. K. Parasaran, lastlyurged that the role ascribed to accused No.1 and accused No.3 being identical namely accusedNo.1 caught hold of Mohan whenaccusedNo.2 stabbed Mohan and accused No.3 caughthold of Sekharwhen accused No.2 stabbed Sekhar andthe High Court having Re-appreciated the evidence has already rejected the same so far as the role ascribedto accused No.3 is

concerned, thesame infirmities m relationto the role ascribed toaccusedNo.1 also vitiates the ultimate conclusionof the High Court in convicting accused No.1 and the accused No.1 is entitled to get benefit ofdoubt . Mrs.Amreshwari, learned senior counselappearing for the state on theother hand contended that when two courts of facthave already appreciated the evidence and have recorded their conclusion to the effect that the prosecution has been able to establish the charges againstaccusedno. 1 and 2 beyond reasonable doubt it would not beproper for thecourt to interfere with thesame conclusion in exerciseof power under Section 136 of the Constitution more particularlywhen two precious lifehave been lost. Thelearned counsel also urged that it istrue that prosecution has not beenable to explain injuries on the accused persons but the said question has alsobeen considered by the High Court and yetin viewof the clear agent evidenceof theprosecution witnesses when theHigh court has convicted the two accused persons. the sameneed not beinterfered with by this Court. According to the learnedcounsel the substratum of thecase isthat accused No.1 caught hold of Mohan when accused No.2 stabbed Mohan with the knifeat hisabdomen has been fully established throughthe several witnesses who themselves havebeen injuredin the Course of incident,and therefore, the conviction of the twoappellants maintained by theHigh Court need not be interfered with by this CourtMrs. Amreshwari, however, in her ultimate submission statedthat though accusedNo.1 may be entitled to benefit of doubt by applying the same reasoning and the same infirmities in the prosecution witnesses on which accused No.3 hadbeen acquitted, but so far as accusedNo.2 is concerned, conviction being basedupon clear and cogentevidence the same cannot be interfered with. Coming to the questionof non-explanation of the injuries on the accused, it appears from Exhibit D-6 , Private WoundCertificate the accused appellant No. 1 sustained a lacerated injury of 5x1/2 cmon parietal eminence-clot formed and wasadmitted in MS III under Neurosurgery ward but discharged against the medical advice and the said injury is grievous in nature but mighthave been caused byblunt object. It is also clearfrom Exhibit P-10 issued by Dr. S. Koteswara Rao, Casualty Medical officerof thehospital at Tirupati that the appellantNo.1 was dischargedfrom the hospital on 24.4.1990 at 10 p.m. to get treatment for Neurosurgery care at higher centre. The Doctor (PW-15) in his evidence stated : "A-1 was examined by me on the requisition sent by East P.S. Tirupati on 23.9.90. TheA-1 was sent to the hospital with an escort of fivepolice constables. I examined A-1 on 23.3.1990 at 4.45 a.m. As per accident register A-1 told me at that time that he was assaulted with iron rods, sticks and chains. I found a lacerated injury 5X 1/2 cms. On right parietal eminence. Blood clot were found. X-ray was also taken. A-1 was admitted in M.B.3 ward under Neurosurgeon. Theinjury found on A-1 was grievous and there are 12 and 13 stitches and after the receipt of the said injury to A-1, heshould have profused bleeding." Exhibit D-11 is the certificategiven by thesaid Doctor indicating thaton 5.10.1990 the accused - appellant No.1 attended the hospital for sutureremovaland dressing and even on that date the woundwas notcompletely healed up and according to Doctor. It would take another one month for healing. The aforesaid injury on accused - appellant No.1 on vital part of the bodyis undoubtedly a grievous injury and the injured must

have profusedbleeding as stated by PW-15. The accused- appellantNo.2 had sustained the following injuries as isapparent from ExhibitD-7, which was the certificate Issued by PW-15: "1. Multiple abrasions with swelling of 2x1 cm. Size over right eye. 2. Rightblack eye present. 3. Swelling of right Molar bone present." PW-15 in his evidence alsostated: "The samepolicebrought A-2 at 4.45 a.m. and examined him on police requisition. He identified A-2 Comparing his identification marks. A-2 also stated before me that he was assaulted with iron rods, chains and sticks.I found the following injuries on A-2 at that time. I. Swelling of 2x1 cm. Size on the right molar bones. 2. A black eyepresent. 3. Swelling in right molar bone.The injuries are simple innature. Ex.D.7 is the certificate issued in favour of A- 2." The aforesaid injuries on accused - appellant No.2 are undoubtedly simple in nature. The father of both the accused - appellants,Subramanium also sustained the following injuries as isapparent from the certificateExhibit D-8 issued by PW-15:- "1. An abrasion of 5 cm. In length over the vault of the skull. Red in colour. 2. Swelling in left eye brow. 3. Swelling in upper part of leg. 4. Abrasion of 6x3 cm. Over left calf muscle. 5. Abrasion of 7x4 cm. below left calf muscle X-Ray No.1505/14536 of skull AP- Nobony injury noted. Hehas been admitted in MSIII ward under Neurosurgery and discharged against Medical advice. The injury is simple in nature, might have been caused by blunt object and the age isabout 6 hours. Station : Tirupati. Sd/- 20.10.90 20-10-90 (Dr. S. KOTESWARA RAO) CIVILASST. SURGEON S.V.R.R. HOSPITAL, TIRUPATI." PW-15 also in his evidence reiterated the same by stating:- "Ifound the following injuries on him. I have examined himat 4.45 a.m. 1. An abrasion 5cms. In length over the walt of skull, 2. Swelling on left eye browpresent. 3.Swelling of upper part of the left leg.4. Abrasion of 6 x 3 cm. over the left calf muscle. 5. An abrasion of 7x4 cms. Below right cough muscles. He was also admitted ward No.3 in charge of Neurosurgeon. The injuries are simple innature and the age is about sixhours. 5xD.8 isthe said certificate." The aforesaid injuries no doubt are simplein nature as opined by PW-15. The High Court came to the conclusion that both the accused appellants as well as theirfather - Subramanium received the injuries in course of the occurrence. The question thatarisesfor consideration iswhether the prosecution hasofferedany explanationfor such injuries on the accused- appellants as well as their father and if no explanation has been offered then forsuch non explanation has been offered then for suchnon-explanation the prosecution case in anyway gets affected. The law inthis regard has been well discussed in a judgment of this Court in theCase of LAKSHMI SINGH AND OTHERS VS. STATE OF BIHAR,(1976) 4SCC 394, It has been held bycourt in the Aforesaid casethat where theprosecution fails to explain the injuries onthe accused then two results may follow:- 1. that the evidence of the prosecution witness is untrue; and 2. that the injuriesprobabilise the plea taken by the appellants. Ithas also beenheld inthe aforesaid case thatin a case that in a caseof murder non-explanation of the injuries sustained by the accused at about the time of the occurrence is a very important circumstance from which the court can draw the following inferences: (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version; (2) that the wit-

nesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore theirevidence is unreliable; (3) thatin case there is a defence version whichexplains the injurieson the person of the accusedit isrendered probable so as to throw doubt on the prosecution case." Ithas further been heldthat omission on the part of the prosecutionto explain the injurieson the person of the accusedassumes much greater importance wherethe evidence consists of interestedor inimical witnesses. But it is equallywell settled that the prosecution is not obliged to explain the injuriessustained by the accused if the injuries are minor and superficial and wherethe injuries are not sustained in course of the occurrence. On abare examination theinjuries found on the two appellants aswell as their father - Subramanium, we found that though the injuries on appellant No.2 aswell asfather - Subramanium were minor in nature and quite superficial and as such the prosecution was not obliged to explain thoseinjuries but the injury on appellant No.1 was of such nature that it cannot go unnoticed bythe witnesses to the occurrencemore so when the medical evidence is to the effect that there must be profused bleeding. In respect of such grievous injury sustained by the appellant No.1 the prosecution is bound to offersome explanation and if explanation is not offered then the court is entitled to drawinference as held by this Court in the caseof LAKSHMI SINGH AND OTHERS VS. STATE OF BIHAR referred to supra, PW-1 who is admittedly an eye-witnessto theoccurrence and was at the stop right from the beginning, inhis evidence stated: "It is nottrue to saythat in the incident A-1 and A-2 received bleeding injuries on the head and A-1 sustainedserioushead injury. It is not true to say that at the time of the incident Subramanium - the father of A-1 and A-2 was present and he received injury on heshead and other parrots of his body." PW-2 who is also an eye-witness to theoccurrence stated "I have seen the bleeding injuries on the head of A-1 and A-2 but he said injuries were caused due tohurlingof stones by A-4 and A-5 from the building." It was elicited from his cross-examination : "police asked me as to how A-1 and A-2 got bleeding injuries and 1 did not state to the police at that time that A-1 and A-2 received bleeding injuries due to hurlingof stones by A-4 and A-5". PW-3 who isalso aneye- witnessto theoccurrence didnot state anything about the injuries beingsustained by A-1 and A-2 and howsuch injuries were sustained. PW-6 is also an eye-witness to the occurrence andwas himself also one ofthe injured. Healso in hisevidence stated that there were no injuries on A-1 and A-2 at the timeof occurrence and further he states that he does not knowwhetherA-1 andA-2 andtheir father were admitted to the hospital by the Police. PW-7 is also an witnessto theoccurrence andhe stated inhis evidence that at the time of occurrence there wereno bleeding injuries on the head of A-1 and A-2. PW-8 is equally a witnessto the occurrence and he no doubt had stated that he had marked thebleeding injuries on the head of A-1 and A-2 but did not state asto how accused A-1 and A-2 sustained those injuries.PW-10 though was examined by the prosecution but did not support the prosecution and therefore was permitted bythe court to be cross-examined by the prosecution. PW-12 is a witness to the assault by accused No.2 on Sekharas well as the assault on PW-7 by accused No.1. He in hes evidence

hasstated : “at the scene of occurrence didnot see any bleeding injuries on A-1 and A- 2”. Thus, out of theaforesaid 7 eye-witnesses to the occurrence except PW-2and PW-8 rest did not even state to have seen the injuries on the head of thetwo accused appellants. PW-8 though statedto havesen theinjuries but did not offer explanation as too howthose injurieswere sustained by the accused appellants. PW-2 though offered an explanation namely theinjuries are sustained on account of hurlingof stones by A-4 andA-5 but the High Court on appreciating the evidence came to the positive conclusion that the prosecution story that A-4 and A-5were hurling stones is not believable and infact they had not hurled the stones as alleged. That apart as has been indicated earlier the PW-2 had not stated before thepolicewhile being examined under-Section161 Cr.P.C. about theexistence of injuries on the head of the accused personsor as to how those injurieswere caused. In the aforesaidcircumstance the conclusionis irresistiblethat the prosecution has not offered any explanation for the grievousinjuries on accused-appellant No. 1which the prosecution was obliged to explainand such omission on the part of the prosecution to explainthe injuries on accused appellant No.1 assumes greatersignificance since all the eye-witnesses to the occurrence are related to the deceased and thuswere interested in the prosecution. In asmuchas PWs 1 and 2 are brothers of deceased Sekhar, PW-3 is the mother of deceased Sekhar,PWs 6 and 7 are brothers of deceased Mohan, PW-8 is the brother-in-law of Mohan and PW-12is the elder brother of Mohan. In the aforesaid premises,we findconsiderable force in the submissionof Mr. Parasaran, the learned senior counsel for the appellants, that prosecution has not explained the grievousinjuryon thehead of accused - appellant No.1 and suchnon-explanationpersuades us todraw an inference that the prosecution has not presented thetrue versionat least so far as the role played by accused appellant No.1and thewitnesses who have beenexamined and who have ascribed a positive role to the appellant No.1that he caught holdof Mohan whenappellant No.2 stabbed Mohan are not true on material point and their evidence thus has become vulnerable. Even though the accused-appellantNo.2 also sustainedsome injuries as indicated earlier but those injuries beingsimple and superficialthe prosecution may not beobligedto offer the explanation to thesame but the same principlewill have no application whenan injury of such grievous nature as was sustainedby accused-appellant No.1 had not been explained by the prosecution witnesses who are grossly interestedin the prosecution being all related to one another. Atthis stage it would beproper for us to; notice the contention advanced byMrs. Amreshwari, the learned senior counsel appearing for the State that the prosecution evidence having been scrutinised by the learned sessions Judge and the High Court and having been accepted by the two courts below it wouldnot beproperfor this Court to interfere withthe convictionin exercise ofpowers under Article136 ofthe Constitution. We,however, are unable to persuade ourselves to agreewith the submission wince we are not appreciating the evidence inthis case but we are only applying a principle ofcriminal jurisprudence which casts an obligation on the prosecution toexplain the injuries on the accused particularly when theinjuries are of grievous nature and theconsequences of suchnon- explanation ofthe injury. That apartin appropriate cases there is no

bar on thepowers of this Court even to examine the evidence if the appreciation of such evidence by the Courts below on the face of it appears to be erroneous and such erroneousappreciation causes miscarriage of justice, However, we are not delving further into the question since we arenot appreciating the evidencein the case in hand. The High Courtin ouropinion committed gross error in comingto the conclusion that non-explanation of the injuries on A-1 is not material. Thevery approach of the High Court that since police did not confront the witnesses about the accused receiving injuries while examiningthem under Section 161 Cr.P.C., no explanation is forthcoming is erroneous. Itwould also appear fromthe materials on recordthat though according to the eye-witnesses the incident occurred in front of the houseof accused No.3 where both deceased Mohan and Sekhar werestabbedby accused No.2 and while taking the injured persons Mohan felldown infront of the house of Prabhakar asa result of which bloodfell down in front of the house ofPrabhakar. yetit is difficult to imagineas to how blood stainswere found fromthe house of Prabhakar uptothe house of Venkat Reddy as has been stated by PW-2 and PW-22 oneof theinvestigating officers and according to the said PW-22 thedistance between Prabhakar's house and Venkat Reddy's house is more than 120feet. Though Mohan and Sekhar werestabbedin front of the house of accusedNo.3 as stated by the prosecution witnesses but blood stains being available upto the house ofPrabhakar is explained fromthe fact that the injured personswere carriedupto that placebut beyond thatit is no body'scase that the injured persons werecarried any further and as such no explanation is forthcoming as to howblood stains could be found upto theVerandaof the house ofVenkat Reddy and then bloodstained stoneswere also recovered from the Verandaof said Venkat Reddy.This feature also indicates that the prosecution witnessesare notsure asto where the occurrence tookplace. It also appearedfrom the evidence of PW-2 and PW-8 that there were several other people who witnessed the occurrence and they arenot theresidents of that locality.If suchindependent witnesses were available and yet were not examined by the prosecution and only those personswho are related to the deceased were examinedthen in such a situation the prosecution case has to be scrutinised with more care and caution.Further Mr. Parasaran is right inhis submissionthat the witnesses ascribed the role of caching hold of Mohan byaccusedNo.1 and role of caching hold of Sekhar byaccusedNo.3 and the High Court gave the benefit to accused No. 3 since the witnesses had not narrated the same to thepolicewhen examination under Section 161 Cr.P.C. took place and therefore the self sameinfirmities having crept in when the prosecution witness stated about catching hold of Mohan by accusedNo.1, the said accused No.1 is entitled to the benefitof doubt. In fact as stated earlier Mrs. Amreshwari, the learned senior counsel appearing for the Statealso fairly stated that possibly it would bedifficult to sustain the convictionof accused No.1 when the accused No. 3 has hot benefit andhas been acquitted and no appeal against the said order of acquittal has been filed by the State. On accountof such infirmities in that prosecution case as indicated above and more particularlywhen the prosecution has failed to offerany explanation for the grievous injuries sustained by accused No.1 on his headand theHigh Court has already found that the saidinjury was caused in course of

the incident, we have no hesitationto heldthat the accused-appellant No. 1 D.V. Shanmugam is entitled to the benefit ofdoubt and weaccordingly set aside the conviction and sentenceof the said accused- appellant No. 1 both under Section 302/34 IPCas wellas under Section 324 IPC and directthat heshall be set atlibertyforthwith if his detention is not required in any other case. But comingto the case of appellant No.2 the same stand on a slightly different footing. Mr. Parasaranno doubt had argued with vehemence that the entire case mustbe discarded in asmuchas the prosecution has notpresented thetrue versionand has suppressed the genesis and origin of the occurrence which inference is tobe drawn fornon- explanation of the injuries on the accused person. But as we found that theinjuries on the accused-appellant No.2 are all simple andsuperficial in nature and the Prosecution is not bound to explain such minor and superficial injuries. That apart where the evidenceis absolutely, clear, cogent and consistent coming from an independent source that it far outweighs the effect of the omissionon thepart of the prosecution toexplainthe injuries onthe accused, insuch a casea conviction can be based notwithstanding injury is not being explained as has been heldby thiscourt in the very case of LAKSHMI SINGH AND OTHER Vs. STATE OF BIHAR on which Mr. Parasaran, the learned senior counsel placed reliance upon.So faras the substratum of the prosecution case of accused - appellant No.2 is concerned it hasbeen consistently stated by all the eye-witnesses to the occurrence that accused No. 2stabbedMohan on his abdomen with the knifeand stabbed Sekhar also on theabdomenwith the knife. Their evidence also gets corroborated from the medicalevidence as well as from the post-mortem examination of thedead bodies of the two deceasedpersons. Even in the earliest version, in the FIRit had been categorically stated that accused No.2 D. VaidvelustabbedMohan with a knife on his abdomen and alsostabbedSekhar with Knife on his stomach andintestine came out. In view of the aforesaid clinching evidence so for as the role ascribedto accused - appellant No. 2, notwithstanding the infirmities indicated earlierfor which we have given benefit of doubt to accused - appellant No. 1, itmust be heldthat the prosecution case as against the appellantNo.2 has been proved beyond reasonable doubt and therefore the convictionand sentence againstthe said accused - appellant No.2 as affirmed by the High Court does not warrant any interference by this court. In thenet result, theconviction and sentenceof appellant No.1 -D.V. Shanmugam passed by the High Courtis set aside and heis acquitted of the charges. He be set at liberty forthwith unless required in any other criminal case but conviction andsentence as against appellant No.2 passed by the bythe High Court stands affirmed and the appeal so far as A-2is concerned isdismissed. Thisappeal is allowed in part.