Nallabothu Ramulu @ Setharamaiah & Ors vs State Of A.P on 22 April, 2014

Equivalent citations: 2014 AIR SCW 2440, 2014 (12) SCC 261, 2014 CRI. L. J. 2487, AIR 2014 SC (CRIMINAL) 1173, AIR 2014 SC (SUPP) 1264, (2014) 4 CRILR(RAJ) 1248, (2014) 3 DLT(CRL) 651, (2014) 4 KCCR 440, (2014) 2 UC 1094, (2014) 3 ALLCRILR 376, (2014) 86 ALLCRIC 264, (2014) 2 CURCRIR 638, (2014) 3 RECCRIR 257, (2014) 139 ALLINDCAS 260 (SC), (2014) 5 SCALE 436, 2014 (2) CRIMES 252 SN

Bench: Ranjana Prakash Desai, Sudhansu Jyoti Mukhopadhaya

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1424 OF 2003

Nallabothu Ramulu @ Seetharamaiah & Ors.	…	Appellants
Vs.		
State of Andhra Pradesh	…	Respondents

WITH

CRIMINAL APPEAL NO.15 OF 2004

Chalamala Veeraiah & Anr.	…	Appellants
Vs.		
State of Andhra Pradesh	…	Respondents

J U D G M E N T

(SMT.) RANJANA PRAKASH DESAI, J.

1. Both these appeals are directed against judgment and order dated 24/07/2003 passed by the High Court of Andhra Pradesh in Criminal Appeal No.921 of 2000 and, hence, they are being disposed of by this common judgment.

2. The appellants were charged and tried by the IInd Additional Sessions Judge, Guntur in Sessions

Case No.967 of 1994 inter alia for offences under Sections 147, 148, 324, 307, 302 read with Section 149 of the IPC. Learned Sessions Judge by judgment dated 11/2/2000 acquitted all the accused. The State of Andhra Pradesh carried an appeal from the said order to the High Court of Andhra Pradesh. By the impugned judgment and order dated 24/07/2003, the High Court set aside the order of acquittal and convicted the appellants in Criminal Appeal No.1424 of 2003 viz. A1-Nallabothu, A3-Rayidi Brahmaiah, A4-Rayidi Purnaiah, A11-Nallabothu Sreenivasa Rao, A14- Rayidi Kotiah, A15-Rayidi Veera Mallaiah, A16-Mupalla Ramaiah, A21-Rayidi Lingiah, A23-Rayidi Sreenivasarao, A24-Duggineni Peraiah, A25-Mannem Hanumantha Rao, A27-Rayidi Ramarao and A29-Rayidi Venkateswarlu, under Section 302 of the Indian Penal Code ("the IPC") and sentenced each one of them to undergo rigorous imprisonment for life. In addition, Accused No.3 and Accused No.4 were convicted under Section 324 of the IPC and sentenced to undergo rigorous imprisonment for three years each. Accused No.25 was convicted under Section 324 of the IPC and also under Section 324 read with Section 149 of the IPC and sentenced to undergo rigorous imprisonment for one year on each count. The appellants in Criminal Appeal No.15 of 2004 viz. A38-Chalamala Veeraiah and A39-Chalamala Subbarao were, however, convicted under Section 324 read with Section 149 of the IPC and sentenced to suffer rigorous imprisonment for one year each. The appellants in both the appeals were also convicted under Section 148 of the IPC and sentenced to undergo rigorous imprisonment for one year each. The substantive sentences were ordered to run concurrently. Being aggrieved by their conviction and sentence, the appellants have approached this Court. For the sake of convenience, we shall refer to the accused and the prosecution witnesses as per the numbers assigned to them by the trial court.

3. Tondepi village is a faction-ridden village within the limits of Muppala Police Station. There were two groups in the village, against whom, cases and counter-cases were pending. There were land disputes between A28-Rayidi Anjaiah and his father Rayidi Venkatappaiah. One group was supporting A28-Rayidi Anjaiah and the other group was supporting his father.

4. On 16/3/1993, at about 1.30 p.m., some of the accused abducted PW-19 V. Seshagiri Rao and tried to kill him. However, due to the timely intervention of the police, he was saved and admitted in the Government Hospital, Settenapalli. In this connection, the police registered a case being Crime No.5 of 1993 for offences punishable under Sections 147, 148, 323, 324, 364 and 307 read with Section 149 of the IPC against some of the accused in this case. As they were unsuccessful in their attempt to kill PW-19 V. Seshagiri Rao, they armed with iron rods, axes, spears, sticks and bombs waylaid in Dammalapadu Donka and formed themselves into an unlawful assembly with a common object of killing the persons belonging to Nallabothu Venkaiah group. After admitting PW-19 V. Seshagiri Rao, in the Hospital at Sattenapally, Challa Singaiah and Rachankonda Chanchiah and PW- 1 to PW-10 and some others were returning to their village in a tractor in the night intervening 16/3/1993 and 17/3/1993. The accused attacked Singaiah and Chanchiah and PWs-1 to 16 when they reached Dammalapadu Donka. Bombs were hurled. Singaiah succumbed to the injuries at the spot. PW-1 to PW-10 and Chanchiah, who sustained injuries, were admitted in the Government Hospital, Sattenapally. Chanchiah succumbed to the injuries on 17/3/1993 while he was undergoing treatment. The hospital authorities sent an intimation to the Additional Munsiff Magistrate, Sattenapally. Pursuant to the said information, the learned Magistrate went to the hospital and recorded the statement of PW-1 R. Venkata Rao, on the same day, in the presence of the Duty

Medical Officer. On receipt of the statement of PW-1, the Sub Inspector of Police, Sattenapally, registered a case being Crime No.43 of 1993 for offences punishable under Sections 147, 148, 324, 307 and 302 read with Section 149 of the IPC and Sections 3 and 5 of the Explosive Substances Act and transferred the case to Muppala Police Station, within whose jurisdiction the incident occurred. On receipt of the copy of the FIR, Muppala Police re-registered it as Crime No.6 of 1993 of their police station. PW-29, the Circle Inspector, Muppala, conducted the investigation. After completion of investigation, the accused came to be charged as aforesaid. At the trial, the prosecution examined as many as 31 witnesses. The accused denied the prosecution case. As earlier stated, the trial court rejected the prosecution case, held that the prosecution has not proved its case beyond reasonable doubt and acquitted the accused. The High Court reversed the order of acquittal and convicted the accused as aforesaid. Hence, these appeals.

5. We have heard learned senior counsel appearing for the appellants. Counsel submitted that the High Court erred in disturbing the acquittal order passed by the trial court. Counsel submitted that the view taken by the trial court was a reasonably possible view. It was not a perverse view. The High Court ought not to have set aside the acquittal order just because it felt that some other view was also possible. Counsel submitted that the High Court has not indicated in the impugned judgment the reasons why it felt that the trial court's view was not sustainable. Counsel submitted that the trial court has meticulously considered the evidence of every witness, marshaled the facts correctly and held that the prosecution has not proved its case beyond reasonable doubt. It is, therefore, necessary to set aside the impugned order and restore the trial court's order.

6. Mr. A.T.M. Rangaramanujam, learned senior counsel for the State of Andhra Pradesh, on the other hand, supported the impugned judgment. He submitted that the trial court gave undue importance to trivial matters. It wrongly disbelieved the evidence of injured eye-witnesses on account of minor discrepancies. The trial court's judgment rested on conjectures and surmises. It was a perverse judgment and, therefore, the High Court rightly set it aside. No interference is, therefore, necessary with the impugned order. Counsel urged that the appeals be dismissed.

7. The High Court reversed the order of acquittal passed by the trial court. The question is whether the High Court justified in doing that. To answer this question, it would be necessary to refresh our memory and have a look at the principles laid down by this Court for guidance of the Court dealing with an appeal against an order of acquittal. In Chandrappa & Ors. v. State of Karnataka[1], this Court laid down the principles as under:

> "42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:
>
> (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
>
> (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach

its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused.

Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

8. In Dwarka Dass & Ors. v. State of Haryana[2], this Court observed as under:

"2. While there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence:

one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice."

9. In Bihari Nath Goswami v. Shiv Kumar Singh & Ors.[3], this Court observed as under:

"8. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice

> in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent." Keeping the above principles in mind, we shall approach the present case.

10. We shall examine the trial court's view on each salient aspect of the case and see whether it was perverse, warranting High Court's interference. It must be borne in mind that the incident took place at dead of night and in an area which was away from town. Admittedly, there were two factions in the village and the relations between the two factions were strained. In an earlier incident, PW-19 was attacked by the opposite group. Hence, the possibility of witnesses trying to falsely implicate persons belonging to the rival group cannot be ruled out. Also important is the fact that according to the prosecution, 50 persons were involved in the brutal attack. In a case of this nature, availability of light for identification of the accused would assume great importance. The trial court meticulously scanned the evidence and opined that there was no sufficient light at the scene of offence to enable the witnesses to identify the accused. On a reading of evidence of witnesses and noticing some discrepancies, the trial court arrived at a finding that the story that the assault was witnessed by the witnesses in torch light or tractor light is not acceptable. While coming to this conclusion, the trial court further noted that in the FIR, in the observation report and in the inquest report, there is no mention of availability of light.

11. The High Court overturned the findings of the trial court on availability of light on the ground inter alia that witnesses were deposing 5½ years after the incident and there are bound to be some discrepancies in their evidence. The High Court also observed that at night, vehicles are not driven without lights. The High Court noted that the prosecution witnesses have stated that they knew the accused as they belonged to the opposite group and, therefore, it was possible for them to identify the accused. The High Court also noted that PW-1 was injured so he might not have mentioned about availability of light in Ex-P/1. Moreover, the witnesses have not identified all the accused. This gives credibility to their evidence. The High Court also noted that four torches were found at the scene of offence and, hence, there was sufficient light at the scene of offence. We feel that the High Court was not right in setting aside the trial court's reasonable view on availability of light. The fact that neither in the FIR nor in the observation report nor in the inquest report there is mention of availability of light, is important. By itself each of these circumstances may not be significant. But, taken with other facts, they assume importance.

12. The trial court rightly observed that assuming the prosecution witnesses had torches in their hands, they would not switch them on for fear of being spotted and subjected to attack. Besides, according to the prosecution, there were 50 accused. Some of them hurled bombs at the witnesses. Therefore, the attack must have resulted in smoke and dust rising in the air. In such a situation, it would not be possible for the prosecution witnesses to identify the assailants out of 50 persons, who, according to the prosecution, launched the attack. In any case, it would not be possible for the witnesses to note what role each accused played. The overt acts attributed by the witnesses to the accused must be, therefore, taken with a pinch of salt. All the accused were not known to the

witnesses, because some witnesses stated that they would be able to identify them if they are shown to them. But even assuming they knew the accused and there was some light at the scene of offence, it does not appear that it was sufficient to enable the witnesses to identify the accused and note overt act of each of them. Possibility of wrong identification cannot be ruled out. The view taken by the trial court on this aspect is reasonably possible view. The High Court was wrong in disturbing it in an appeal against acquittal.

13. According to the prosecution, after admitting PW-19 at Sattenapally Government Hospital, PW-1 to PW-16, the two deceased and others were returning to Tondepi village. At that time, at Dammalapadu Donka, the incident occurred. PW-1 is an important witness because he was injured in the incident. His dying declaration was recorded, which is at Ex-P/1. On the basis of that dying declaration, Ex-P/26, the FIR was registered at P.S. Sattenapally. PW-1 stated that the police came to the spot immediately and within 15 minutes of their arrival, they were shifted to Sattenapally Government Hospital. He stated that PW-28 S.I., P.S. Muppala came there. He also stated that there was a police camp at Gram Panchayat Office of Tondepi village. PW-28 S.I., P.S. Muppala confirmed that there was police camp at the Gram Panchayat Office. He was posted on bandobast duty on account of the incident in which PW-19 was injured. He had recorded the statements of witnesses in the earlier case from 5.00 p.m. to 8.00 p.m. on 16/3/1993. Evidence of witnesses shows that they had informed the police about the incident in question. PW-2 an injured eye-witness stated that he informed the police about the incident, but his statement was not recorded. PW-3 the Head Constable, who had accompanied PW-19 to the hospital on 16/3/1993 stated that PW-28 S.I., P.S. Muppala and other police staff came to the place of occurrence and injured were taken to the village and then to the hospital within an hour. He stated that PW-28 S.I., P.S. Muppala did not record his statement. PW-3 was attached to P.S. Muppala. PW-28 S.I., P.S. Muppala should have recorded his statement and registered a case but he did not do so. PW-8 stated that S.I., P.S. Muppala came to the spot but he did not record his statement. PW-9 and PW- 10 made similar statements. PW-12 stated that he escaped from the scene of offence, went to the village and came back to the scene of offence with the villagers. He stated that he informed the police about the incident. PW- 13 stated that he escaped from the scene of offence and returned with the police. He stated that when he revealed the incident to the police, they recorded his statement. PW-14 stated that he had informed about the incident to the police but he does not know whether the police had reduced his information into writing. PW-15 stated that he had witnessed the occurrence for about three minutes. He had informed the police about the incident but the police did not record his statement.

14. PW-28 S.I., P.S. Muppala admitted that he shifted the injured to the hospital and the injured informed him that the opposite group had attacked them. He stated that when he went to the village to get a tractor to shift the injured, he had informed his superiors about the incident on phone. He further stated that PW-29 Circle Inspector (IO) came to the village at 3.00 a.m. and he assisted him in the investigation at the spot. Thereafter, he proceeded to the Police Station, Muppala and there, he received copy of the FIR from S.H.O., Sattenapally. The evidence of all these witnesses read with evidence of PW-28 S.I., P.S. Muppala show that the witnesses had informed PW-28 about the incident and the fact that the opposite party had attacked them. While statements of some witnesses were not recorded, statements of some witnesses were recorded, but they were not produced. PW-28 S.I., P.S. Muppala ought to have registered the FIR on the basis of statements of injured

eye-witnesses. PW-3 Head Constable was, in fact, attached to the P.S., Muppala and was working under him. It is not understood why his FIR was not recorded. The omission to record the statement of any of the injured witnesses as FIR or to record statements of witnesses under Section 161 of the Cr.P.C. by PW-28 casts a shadow of doubt on the prosecution case. There was no need for the police to wait for recording of the statement of PW-1, treat that as dying declaration and then register the FIR on that basis. While, according to the prosecution, the incident took place at 1.00 a.m. on 17/3/1993, PW-1's statement [Ex- P/1] was recorded at 3.15 a.m. In the facts of this case, not registering FIR on the basis of statement of injured witnesses at the spot of incident and the delay in registering FIR give rise to a suspicion that the injured witnesses were unable to name the accused on account of darkness and that the FIR was doctored in the form of dying declaration of PW-1 which was subsequently converted into Ex-P/26. This reasoning of the trial court appears to be correct and ought not to have been disturbed by the High Court.

15. Pertinently, the High Court also took note of the fact that PW-28 S.I., P.S. Muppala did not record the statements of witnesses. But the High Court brushed aside this serious lacuna in a perfunctory manner. The High Court noted that even though injured persons were present, PW-28 S.I., P.S. Muppala did not record their statements, he did not obtain any written complaint, he did not register any complaint and did not send any requisition for medical treatment. The High Court further noted that PW-28 S.I., P.S. Muppala did not make any enquiry with PW-2 and PW-4 about the incident. The High Court observed that PW-2 and PW-4 would have given the earliest version of the incident. But, surprisingly, the High Court explained away PW-28 S.I., P.S. Muppala's inaction by observing that probably, he might not have brought any papers to the scene of offence. The High Court observed that since the witnesses were injured, PW-28 S.I., P.S. Muppala's first duty was to shift them to the hospital. The High Court then observed that PW-28 S.I., P.S. Muppala might be aware that being only Sub-Inspector, he could not have conducted investigation of a murder case and that he was perhaps expecting the Inspector of Police to take up investigation as he had informed him on phone. The High Court further observed that at best not recording statements of witnesses is an irregularity and cannot affect the veracity of prosecution case. We are of the opinion that the High Court treated this gross lacuna in the prosecution case lightly. In this case, where relations between the two sides were strained, there was an earlier incident of attack and there were about 50 accused involved in the incident, the earliest version of the prosecution case was most crucial but it was not noted down.

16. The evidence of PW-29, the Circle Inspector, P.S. Muppala, who was the Investigating Officer, would also throw some light on this aspect. It is clear from his evidence that he received the information with regard to the incident much prior to Ex-P/1. He was informed by PW-28 S.I., P.S. Muppala about the several statements made by the witnesses. He stated that he instructed PW-28 S.I., P.S. Muppala to send the injured witnesses viz. PW-11, PW-12 and PW-13 to Government Hospital, Sattenapally and then he examined PW-14, PW-15 and PW-16. He admitted that he did not note down the information received about the occurrence anywhere. He further stated that on the night intervening 16/3/1993 and 17/3/1993, he did not visit Tondepi village at all and he did not ascertain from the police picket at Tondepi village as to whether any report was received by the police picket on that night regarding the incident. He stated that he did not make any further enquiry. He stated that when he reached P.S. Muppala between 7.00 p.m. and 8.00 p.m., the Sentry

talked to him and told him about the incident. He admitted that he did not give any instructions to the Sentry to register the case on the basis of that information. He admitted that after visiting the scene of offence where PW-28 S.I., P.S. Muppala and other staff were present, he did not register the case nor did he ask PW-28 S.I., P.S. Muppala to register the case. He further admitted that PW-28 S.I., P.S. Muppala had informed him that the injured persons had told him that people from Rayudu group waylaid and attacked them with country made bombs and they could identify them. But, he did not register any FIR nor did he ask PW-28 S.I., P.S. Muppala to register the FIR. He tried to explain this by stating that since the dying declaration was being recorded, he directed PW- 28 S.I., P.S. Muppala to register the FIR on the basis of the dying declaration. He admitted that by the time he conducted the inquest of the dead body of Singaiah at the place of offence, he had examined and recorded the statements of PW-1 to PW-11 and after the inquest he recorded the statements of PW-12 to PW-16. He admitted that the FIR was not registered even at the time of examination of PW-1 to PW-6 by him in the hospital. The evidence of this witness also shows that though the earliest version was available, it was suppressed. This makes the investigation of the case suspect.

17. PW-21 is the doctor attached to the Government Hospital, Sattenapally. He stated that he sent an intimation to the Police Station, Sattenapally in respect of admission of PW-1, PW-3 and PW-4. The intimation is at Ex-P/20. It bears the date 16/3/1993 but does not state the time. It also bears the signature of PW-21. PW-21 further stated that on 17/3/1993 at 3.05 a.m., he sent requisition to the Magistrate for recording the dying declaration of PW-1. It is at Ex-P/18. Admittedly on this requisition, the date was originally put as 16/3/1993. But, later on, '6' is overwritten as '7'. Thus, Ex-P/20 and Ex-P/18 create doubt about the time and date of the incident. If PW-1, PW-3 and PW-4 were admitted in the Government Hospital on 16/3/1993 then, the incident could not have happened at 1.00 a.m. on 17/3/1993. The explanation given by PW-21 that he changed the date from 16/3/1993 to 17/3/1993 as it crossed midnight does not stand to reason. It is pertinent to note that PW-21 did not send any intimation to the police in respect of other injured witnesses. PW-28 S.I., P.S. Muppala and PW-29 the Circle Inspector, P.S. Muppala also did not send any requisition to the hospital with respect to the other injured witnesses. PW-27 S.I., P.S. Sattenapally stated that he received Ex-P/20 i.e. intimation in respect of admission of PW-1, PW-3 and PW-4 bearing date '16/3/1993' and the signature of PW-21 at 10.30 p.m. This means the injured were in the hospital by the time of preparation of Ex-P/20 i.e. before 12.00 midnight. The trial court's view that this creates doubt about the prosecution's claim that the incident happened at 1.00 a.m. on 17/3/1993 cannot be called perverse. Moreover, if PW-1, PW-3 and PW-4 were admitted in the hospital on 16/3/1993 much prior to midnight and if PW-1's dying declaration had to be recorded, requisition should have been sent to the Magistrate by PW-21 immediately and not at 3.05 a.m. on 17/3/1993. Consequently, Ex-P/1 i.e. the dying declaration of PW-1 recorded at 3.15 a.m. on 17/3/1993 gives scope to criticism that after prolonged discussion, the investigating officer through PW-21 sent the requisition to the Magistrate and the dying declaration was recorded after much deliberation. Pertinently, PW-8 stated that some of their party leaders had visited them in Sattenapalli hospital. Besides, PW-19, who was attacked prior to the incident in question, was already there in the hospital. Therefore, there is basis for the criticism that there was deliberation before recording the dying declaration. The High Court has referred to the evidence of PW-4 to the effect that no leaders from the party of the prosecution witnesses had visited the hospital. The High Court held that therefore, there can be no tutoring. It is difficult to accept this submission given the history of this incident. PW-19 was

attacked by the other group prior to the incident in question. His presence in the hospital at the time of recording of PW- 1's dying declaration and other statements itself is sufficient to create doubt about the credibility of the prosecution case.

18. It is also pertinent to note that while PW-13, the Head Constable stated that the injured were first taken to the village and then to the hospital, PW-28 S.I., P.S. Muppala stated that the injured were directly taken to the hospital. If, as stated by PW-13 the injured witnesses were first taken to the village and then to the hospital, then it is possible that after consultation with villagers they implicated the accused. This makes a dent in the prosecution story.

19. There are certain other aspects which add up to the weaknesses of the prosecution case. Ex-P/1 states that Challa Narasimha Rao went to the hospital along with PW-1, but his name was not in the charge-sheet as a witness. Ex-P/1 refers to Somapalli Kotaiah as an assailant but his name does not figure in the charge-sheet as an accused. Ex-P/1, which was recorded at 3.15 a.m. on 17/3/1993, states that two persons were murdered. As per intimation [Ex-P/19], deceased-Chanchaiah died at 4.50 a.m. on 17/3/1993. It is not understood how it is stated in Ex-P/1 that two persons were dead. PW-1 stated in his cross-examination that he did not get down from the tractor at any stage. But in his dying declaration [Ex- P/1], he stated that he fell down in the bushes. Moreover, in the inquest report prepared by PW-29, the name of one Challa Koteshwar Rao is shown as the person who first saw deceased-Singhaiah dead. In column 4, name of Challa Koteshwar Rao is mentioned as the person who had last seen deceased- Singhaiah alive and that he was traveling in the tractor along with other witnesses. However, PW-17 Cholla Mangammao, the wife of deceased Singhaiah stated that on that day, Challa Koteshwar Rao was in the village. Seizure of weapons has been disbelieved by the trial court as well as the High Court. It is also important to note that PW-1 stated in Ex-P/1 that 30 people attacked them. But names of only A1 to A12 and A15 figured therein. Names of all the accused were not stated by the witnesses. They stated that they would be able to identify the accused. However, no identification parade was held. Therefore, it cannot be said with certainty which accused attacked whom. Moreover, there are so many omissions and contradictions in the evidence of prosecution witnesses, that the entire fabric of prosecution case appears to be ridden with gaping holes. These discrepancies have been meticulously noted by the trial court. The High Court, however, holds that the witnesses were examined 5½ years after the incident and, therefore, such discrepancies are natural. It is true that due to passage of time, witnesses do deviate from their police statements as their memory fades to some extent. Reasonable allowance can be made for such discrepancies. But when such discrepancies make the foundation of prosecution case shaky, Court has to take strict note thereof. In this case, the trial court has meticulously located the discrepancies and opined that the witnesses have discredited themselves. The High Court ought not to have overlooked this reasoning of the trial court.

20. Finally, we must note that the High Court has not stated why it felt that the trial court's view was perverse. It has not stated what were the compelling reasons, which persuaded it to disturb the order of acquittal. As noted by this Court in several decisions if two reasonable views are possible, the appellate court shall not disturb the order of acquittal because it feels that some other view is possible. The reasonable view which reinforces the presumption of innocence of the accused must be preferred. In our opinion the trial court's view was not perverse. It was taken after thorough

marshalling of evidence. It was a reasonably possible view. The High Court erred in disturbing it.

21. In the circumstances, the appeals are allowed. The impugned judgment and order is set aside. The appellants in both the appeals are acquitted of all the charges. They are on bail. Their bail bonds stand discharged.

.....J. (Sudhansu Jyoti Mukhopadhaya) .....J. (Ranjana Prakash Desai) New Delhi;

April 22, 2014.

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[1] (2007) 4 SCC 415
[2] (2003) 1 SCC 204
[3] (2004) 9 SCC 186
