Sudha Renukaiah & Ors vs State Of A.P on 13 April, 2017

Equivalent citations: AIR 2017 SUPREME COURT 2124, AIR 2017 SC (CRIMINAL) 808, 2017 (13) SCC 81, 2017 CRILR(SC MAH GUJ) 444, (2017) 2 UC 1025, (2017) 4 SCALE 624, (2017) 2 JLJR 341, (2017) 2 ALD(CRL) 52, 2017 CRILR(SC&MP) 444, (2017) 2 CRILR(RAJ) 444, (2017) 2 RECCRIR 693, (2017) 2 KER LJ 482, (2017) 3 BOMCR(CRI) 1, (2017) 2 CURCRIR 230, (2017) 2 DLT(CRL) 664, (2017) 2 CRIMES 397, (2017) 99 ALLCRIC 954, 2017 (174) AIC (SOC) 20 (SC), 2017 (3) KCCR SN 327 (SC)

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Bench: Ashok Bhushan, A. K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.119-120 OF 2014

SUDHA RENUKAIAH & ORS. .... APPELLANTS

VERSUS

STATE OF A.P. .... RESPONDENT

J U D G M E N T

ASHOK BHUSHAN, J.

1. These appeals have been filed against judgment dated 09.07.2013 of High Court of Andhra Pradesh, allowing the Criminal Appeal No. 340 of 2009 and Criminal Revision Case No. 643 of 2008.Criminal Appeal was filed by the State of A.P. and Criminal Revision was filed by Somarowthu Laxmi Samrajyam, wife of Siva Sankara Rao deceased. The High Court vide its judgment has set aside the order of the Trial Court acquitting the accused and has convicted the accused under Section 302 read with Section 149 IPC. The accused aggrieved by the judgment of High Court, convicting them have come up in these appeals.

2. The prosecution case briefly stated is:

All the accused and the de facto complainants are permanent residents of Vellaluru village. Two factions, one of the accused party and another of complainant party had been attacking each other and several criminal cases had been registered against both the factions. One Satyanarana, belonging to the complainant party was killed on 07.02.2003, for which a case in Crime No. 08 of 2003 of Ponnur Rural Police Station was registered for the offences punishable under Sections 147, 148 and 302 read with 149 IPC. While so, another case in Cr. No. 35 of 2003 of Ponnur Town Police Station, was registered for the offences punishable under Sections 147, 148 and 302 read with 149 IPC against Somarowthu Tirupathirao(hereinafter referred as deceased No. 1), Somarowthu Siva Sankara Rao (hereinafter referred as deceased No. 2) and others who were alleged to have killed one Sooda China Veeraiah and in connection with the said case, the above named two deceased and others were arrested and remanded to judicial custody. The Court gave conditional bail to them to the effect that they should remain at Bapatla only and shall report daily before the Bapatla Police Station, and shall also appear before the Ponnur Court once in a week. In connection with the above case, on 10.10.2013 the deceased No. 1 and No. 2, along with PWs. 1 to 6 and PW.9, went to Ponnur on three two-wheelers to attend the Court and after attending the Court, they were returning back in the evening and on receipt of the said information, all the accused except A.2, A.4 to A.6, A.11, A.13 and A.18 conspired together and as A.18 was having a lorry bearing No. ADM 8373, all of them collected deadly weapons like axes, knives, rods and sticks, went in the lorry of A.18 and dashed the two wheeler in which both the deceased and PW.5 were travelling. Both the deceased fell down from two wheeler. Thereafter, the accused attacked them indiscriminately and killed them and also inflicted injuries on PW.5 and they all ran away from the scene of offence in the same lorry along with the weapons. Deceased No. 1 died on the spot and other injured were shifted to the Hospital. The others, who were following the two wheeler of the deceased witnessed the incident and reported the matter to police and shifted the second deceased to Ponnur Hospital, where the Doctor declared him dead and other injured (P.W.5) was referred to Government Hospital, Guntur. On intimation, the police went and recorded the statement of PW.1. PW.20 the Head Constable, Bapatla Town P.S., handed over the file to PW.21 who registered a case in Crime No.57 of 2013 for the offences punishable under Sections 147, 148, 307, 302 read with 149 IPC. After completion of investigation, PW.23 laid the charge sheet.

3. The incident took place at 04:00 PM. Deceased-1, Tirupati Rao died on spot, whereas Siva Sankara Rao, Deceased-2 and S. Venkaiahnaidu (PW.5) were immediately taken to Govt. Hospital, Ponnur at which Hospital Siva Sankara died between 05:30 PM to 06:00 PM. Venkaiahnaidu(PW.5), who was unconscious, on advice of Doctors was shifted to Govt. Hospital, Guntur. The Police came at Govt. Hospital, Ponnur and recorded the statement of Sivarama Krishnaiah (PW. 1) at 06:00PM, on the basis of which statement, the FIR was registered, as Criminal Case No. 57 of 2003 under Section 147, 148 and 302 read with 149 of IPC.

4. PW.23, Investigating Officer(hereinafter referred to as 'IO') took up the investigation on 10.10.2003 itself. After visiting Govt. Hospital, Guntur, IO found Venkaiahnaidu unconscious. He could not record the statement of PW.5. PW.5 on 14.10.2003 was shifted to Hi-tech Hospital, Guntur where he regained consciousness after 20 days. IO recorded the statement of PW.5 on 04.11.2010 at Hi-tech Hospital. The IO also visited the place of incident, seized various articles, prepared the sketch map and also got the spot photographs. After conducting the investigation, IO submitted the charge sheet against 19 accused, out of which A.18 had already died on 14.12.2003. All the accused were put on trial. Prosecution before the Trial Court examined PW.1 to PW.23, marked exhibit P.1 to P.25 and also marked M.O.1 to 16. PW.1 to PW.6 and PW.9 are the eye-witnesses of the incident. PW.7 and PW.8 are the wives of first and second deceased, who after knowing about the incident rushed to the scene of offence. PW.10 was examined to show that on the date of incident, she had seen the accused making preparation in a lorry in front of his house. PW.16 is a doctor who treated the injured at Govt. Hospital, Guntur. Doctors who conducted the postmortem of two dead bodies were also examined, as PW.17 and PW.18. P.W.23 is Investigating Officer who conducted the investigation. The accused did not lead any evidence. During pendency of the trial A.1, A.9, A.11 and A.18 having died, trial abated against such accused.

5. The Trial Court vide its judgment dated 24.12.2007 acquitted the accused. Trial Court after referring to evidence of eye-witnesses came to the conclusion that there were contradictions and omissions. The Trial Court observed that medical evidence does not support any injury by battle axe. After referring to the injuries of P.W.5 and medical evidence, Trial Court observed that it is not possible to hold that injuries were caused with sharp edge weapon like hunting sickle. Trial Court held that accused are entitled to benefit of doubt and acquittal. Aggrieved by the judgment of Trial Court, State filed an appeal being Criminal Appeal No.340 of 2009. Somarowthu Laxmi Samarajaya wife of Siva Sanakara Rao deceased, filed Criminal Revision No. 643 of 2008. Both Criminal Appeal and Criminal Revision were heard together and have been allowed by the High Court. A.1 to A.3, A.5 to A.7 and A.11 were found guilty under Section 302 read with 149 IPC and they have been convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.500/- each. Acquittal of A.12 to A.9 have been affirmed. These appeals have been filed by A.2, A.3, A.5, A.6, A.7 and A.11 (A-1, being dead).

6. We have heard Shri A.T.M. Ranga Ramanujam and Shri Sidharath Luthra, learned senior counsel for the appellants. Ms. Prerna Singh, learned counsel has appeared on behalf of the State.

7. Learned counsel for the appellants in support of the appeal contended that the order of acquittal by the Trial Court was based on appreciation of evidence on record which order of acquittal required no interference by the High Court. It is contended that even if two views are possible, the order of Trial Court acquitting the accused need no interference by Appellate Court. The medical evidence which was led by the prosecution did not support the ocular evidence led by so called eye-witnesses. Hence, the Trial Court rightly disbelieved the prosecution case. The High Court wrongly put the burden on the accused to prove that deceased and eye- witnesses were not required to attend the Court whereas burden lies on the prosecution to prove that the deceased and all the eye-witnesses were required to attend the Ponnur Court from where they claimed to be returning. There being long standing enmity between the accused and complainant party, the accused have been roped in.

When Doctors came before the Court for recording their evidence, the weapons which were seized were not shown to them, so as to form an opinion whether injuries on the deceased and injured witness could have been caused by such weapons, which prejudicially affect the prosecution case.

8. Learned counsel for the State refuting the submissions of learned counsel for the appellants contends that the High Court has rightly reversed the order of acquittal. It is contended that eye-witnesses account given by the eye-witnesses was worthy of reliance and Trial Court on account of insufficient reasons discarded such evidence. The injured PW.5, Venkaiahanaidu, eye-witness had fully proved the incident and specifically proved the roles of accused which evidence ought not to have been discarded by the Trial Court. It is submitted that the High Court has correctly re-appreciated the evidence and has given cogent reasons for finding the evidence trustworthy and believable. The account of injuries as proved by eye-witnesses was fully corroborated with the medical evidence. The evidence of eye-witnesses who were accompanying the deceased Nos.1 and 2 could not have been discarded as interested witnesses whereas they were family members who were accompanying the deceased on the motor-cycle and others on two-wheeler which eye-witnesses could prove the incident. The judgment of conviction by the High Court is based on correct appreciation of evidence and the accused having been found guilty, the appeals deserve to be dismissed.

9. Learned counsel for the appellants has placed reliance on several judgments of this Court which shall be referred to while considering the submissions of the parties.

10. As noted above, PW.1 to PW.6 and PW.9 are all eye-witnesses of the incident. PW.5, Venkaiahanaidu is an injured witness who was travelling on the Hero Honda motor-cycle driven by Tirupati Rao, his father (deceased No.1). The Trial Court after commenting on the evidence of the eye- witnesses had proceeded to discard the evidence by giving some reasons. We have carefully looked into the order of the Trial Court as well as depositions of eye-witnesses and adverted to the reasons given by the Trial Court for not believing the evidence. We shall refer to the reasons given by the Trial Court for discarding eye-witnesses one by one. We first take up the deposition of the injured witness-PW.5 and the reasons given by the Trial Court to discard his evidence.

11. As noted above, PW.5, aged about 12 & ½ years on the day of incident was sitting on Hero Honda motor bike driven by his father, Tirupati Rao, deceased No.1, Siva Sankara Rao deceased No. 2, was also sitting on the same motor bike. PW.5, Venkaiahanaidu in his eye-witness account has deposed that he, his father and Siva Sankara Rao were on Hero Honda motor bike returning to Baptala, PW.1- Sivarama Krishnaiah, PW.3, Murali Krishna, were coming on scooter whereas Veerahaviah, PW.4, Venkatalakshmi Narasimha, PW.2 and PW.9, Venkateswara Rao were coming on TVS moped. They left for about 3 or 3.40 p.m. and at about 4 p.m. when they reached the scene of offence, Tirupati Rao, his father observed that a lorry driven by accused A- 3 was coming from opposite direction, his father turned the vehicle to go back. At that time the lorry hit their motorcycle, they all fell down. All the accused were in the lorry with knives and axes. His father and Siva Sankara Rao were attacked by the accused with axes and knives. A-19 beat PW.5 on his right temporal bone with knife whereas Botchu Vasu – A-11 beat with stick on his right side. He stated that he lost consciousness which he regained at Hitech Hospital, Guntur. It has come on evidence that

immediately after occurrence both Shiva Shankar Rao and Venkaiah Naidu were taken to Government Hospital, Ponnur. Shiva Shankar Rao died between 5.30 to 6 p.m. at Government Hospital, Ponnur and Venkaiahanaidu, PW.5 was shifted to Government Hospital, Guntur where he was examined at 6.15 p.m. by Dr. Vinayvardhan, PW.16, who in his evidence has clearly proved that on 10.10.2003 at 6.15 p.m. he examined injured Venkaiahanaidu accompanied by Murali Krishna, PW.3 and injuries were found in his body. PW.23, IO had taken the investigation in the evening on 10.10.2003 itself and recorded statement of PWs.1, 2, 3, 4, 6 and 9 on the same day. He also on the same day came to know that injured, PW.5 was shifted to Government Hospital, Guntur where he went and found PW.5 unconscious, hence, statement of PW.5 could not be recorded on that day.

12. Now, let us come to the judgment of the Trial Court and advert to the reasons given by the Trial Court for discarding the evidence of injured eye- witness. In paragraph 15 of the judgment, Trial Court has observed that PW.23 in his statement has stated that when he went to Government Hospital, Ponnur, PW.5 was absent and he was shifted to Government Hospital, Guntur as his condition was critical. The Trial Court has observed that unfortunately "the Doctor at Government Hospital, Ponnur was not examined and there is no record to show that PW.5 was also taken to the Government Hospital, Ponnur along with the second deceased". The above observation that no Doctor from Government Hospital, Ponnour was examined nor there is any record to show that PW.5 was taken to Government Hospital, Ponnur has no significance since Venkaiahanaidu, PW.5 was shifted to Government Hospital, Guntur where he was examined at 6.15 p.m. on the same day which was proved by the Doctor. PW.16. PW.1 and PW.3, both had stated that after the incident both the injured Siva Sankara Rao and Venkaiahanaidu were taken to the Government Hospital, Ponnur and after 5.30 p.m. Siva Sankara Rao died and Venkaiahanaidu was asked to be taken to Government Hospital, Guntur. Non-examination of Doctor to prove that injured PW.5 was first taken to Government Hospital, Ponnur was inconsequential and immaterial, when there is no dispute that injured was admitted in the Government Hospital, Guntur and was examined by the Doctor at 6.15 p.m. on the same day. In paragraph 16 Trial Court has referred to evidence of PW.16, Doctor who examined PW.5 on 10.10.2003 at 6.15 p.m. The evidence of Doctor, PW.16 extracted by the Trial Court in paragraph 16 of the judgment that PW.16 who was working as CMO in the Government Hospital, Guntur has stated that on 10.10.2003 at 6.15 p.m. he examined Venkaiahanaidu, PW.5 accompanied by Murali Krishna, PW.3, the Doctor was also noted that PW.5 was injured and said to be beaten with Veta Kodavali (hunting sickle). The following injuries were noticed by the Doctor:

> "1. Diffused swelling 10 x 10 cm on right occipital partial region with one centimeter laceration-bleeding.
>
> 2. Graze abrasion on left hand and fore arm 10 x 5 cm size red in colour.

X-Ray skull reveals no bone injury X-ray left hand with wrist reveals fracture noted in the lower end of radius. Ward opinion with I.P. No.49385 head injury patient absconded on 14.10.2003.

I am of opinion basing on the X-ray and ward opinion the injury No.2 is grievous in nature; No.1 is simple in nature might have been caused due to blunt and rough objects and aged about 1 to 6 hours

prior to my examination. Ex.P13 is the wound certificate issued by me."

13. Trial Court after noticing the evidence of PW.16 has made the following observation :

> "In fact, this evidence gives rise to many doubts. First of all it is not possible to hold that the nature of injuries could be caused with sharp edged weapon like hunting sickle."

14. The Trial Court held that it is not possible to hold that the nature of injuries could be caused with sharp edged weapon like hunting sickle. This was one of the reasons for discarding the evidence of PW.5.

15. PW.5 himself came in the witness box and was examined. PW.5 has deposed about the injuries caused to him. In his statement PW.5 stated:

> "Velivala Akkaiah (A19) beat me on my right temporal bone with a knife. Botchu Vasu(A11) beat with a stick on my right sticks. Valivala Akkaiah (A19) caught hold of my hands and legs and thrown me. I lost consciousness.

I regained consciousness in Hitch Hospital, Guntur.

After that police examined me."

16. When PW.5 has stated that he was beaten by knife and stick on right temporal bone, the injuries found in his person have to be looked into in the light of the evidence given by him.

17. When, PW.5 himself has stated that he was attacked by knife and stick the injuries which were noticed by the Doctor were caused by knife and stick, since there is no inconsistency between the ocular evidence of PW.5 and medical evidence of PW.16, the reason given by the Trial Court for discarding the evidence of PW.5 is incorrect.

18. The Trial Court further has observed that PW.23 had not taken any endorsement from the Doctor to the effect that PW.5 was in fact in unconscious state of mind, when he visited Hospital on 10.10.2003 and found PW.5 unconscious. The Trial Court further observed that since PW.5 was unconscious for considerable period and regained consciousness nearly after more than 20 days, it was expected that the investigation agency to secure the presence of the Doctor while examining this witness. The Trial Court made the following observation in paragraph 17:

> "Even according to prosecution, PW.5 was unconscious for considerable period and regained consciousness nearly after more than 20 days. Naturally, we will expect the investigation agency to secure the presence of the doctor while examining this witness. In the above circumstances, any amount of doubt is created about the examination of this witness. Even at the sake of repetition it must be pointed out that the absence of evidence from the doctor PW.16 that PW.5 was brought to the hospital

> in unconscious state, the whole theory must be disbelieved. Which again will eliminate the evidence of PW.5. Now we got the evidence of PW.1, 2, 4, 5 and 9."

19. The Trial Court has drawn adverse inference against the evidence of PW.5 on the ground that no evidence was given by the Doctor, PW.16 about the unconscious state of PW.5, hence, the whole theory must be disbelieved. PW.5 has stated that after being attacked on the scene of occurrence he became unconscious and regained consciousness only at Hitech Hospital, Guntur.

20. PW.23, IO in his statement has clearly stated that he went after recording the evidence of PW.1, 2, 3, 4, 6 and 9 to the Government Hospital, Guntur and found the injured Venkaiahanaidu, PW.5 in unconscious state, hence, could not record his statement. Following was stated by IO in his statement:

> "I visited GGH Guntur and found the injured S. Venkaiah Naidu (P.W.5) in unconscious state; Hence, I could not record his statement."

21. PW.5 appeared in the Court and in examination-in-chief question was put to him that whether he was unconscious at the time when he was admitted in Government Hospital, Guntur and when he regained his consciousness. PW.5, both in examination-in-chief and cross-examination stated that he regained consciousness after 20 days and next day of regaining consciousness his statement was recorded.

22. Doctor, PW.16, who appeared before the Court and recorded his evidence was not even put any question as to whether when Venkaiahanaidu was admitted in Government Hospital, Guntur he was conscious or unconscious. The observation of the Trial Court that there being no evidence that PW.5 was unconscious and in the absence of evidence that PW.5 was brought to the Hospital in unconscious state, the whole theory is to be disbelieved, is wholly incorrect and perverse appreciation of evidence. There being evidence of PW.5 and PW.23 that he was unconscious when he was admitted in Government Hospital, Guntur and there is no contrary evidence on the record, the view of the Trial Court that whole theory must be disbelieved is perverse and has rightly been reversed by the High Court.

23. It is also relevant to notice that observation has been made by the Trial Court that IO, PW.23 ought to have been taken endorsement from the Doctor that PW.5 was in unconscious state of mind on 10.10.2003, although there is evidence that he was unconscious on 10.10.2003 when he was admitted in the Hospital, the mere fact that certificate was not obtained by IO from the Doctor is inconsequential. Furthermore, it is well settled that even if IO has committed any error and has been negligent in carrying out any investigation or in the investigation there is some omission and defect, it is the legal obligation on the part of the Court to examine the prosecution evidence de hors such lapses. In C. Muniappan and others vs. State of Tamil Nadu, (2010) 9 SCC 567, following has been laid down in paragraph 55:

> "Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on

> the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth."

24. The High Court has specifically considered the evidence of PW.5 in paragraphs 27 and 28 of the judgment. The High Court has rightly observed that the fact of sustaining injuries by this witness has not been denied or disputed nor it was suggested to him that he sustained those injuries at a different place in a different manner in the hands of some other assailants. The High Court observed that some lapses on behalf of the investigation in examining the Doctor of the Government Hospital, Guntur or at Hitech Hospital cannot be taken as sole basis so as to doubt the case of the prosecution. When PW.5 was unconscious, the delay in examination cannot be said to be fatal to the case of the prosecution. The High Court, thus, has correctly appreciated and relied on the evidence of PW.5 which we find fully in accordance with law.

25. The injured witness PW.5 having given specific role of the persons who caused injuries to deceased Nos.1 and 2 which stands corroborated with the medical evidence, ignoring the evidence of PW.5 an injured witness on the grounds as noted above by the Trial Court is clearly unsustainable and the High Court rightly after considering all aspects of the matter has relied on the evidence of PW.5 for holding the accused guilty.

26. We now come to the reasons given by the Trial Court for discarding evidence of other eye-witnesses. With regard to PW.1, Trial Court says that he has admitted that in Ex.P1, the names of A12 to A19 were not mentioned although he stated that he gave the names of the accused when Police examined him. The Trial Court observed that so called conspiracy and participation of A12 to A19 is clouded with doubt. Even if, A12 to A19 have been acquitted, their acquittal does not lead the Trial Court to discard the prosecution case as given in Ex.P1 and supported by PW.1 in his oral evidence. We are, thus, of the view that there is no reason to discard the evidence of PW.1 who was an eye-witness. PW.21 is Sub-Inspector of Police who stated that he received phone call at about 5 p.m. on 10.10.2003 about the offence. He immediately rushed to the scene of offence and learnt that two injured persons were shifted to Ponnur Government Hospital and he also noticed there a Hero Honda Passion. After posting guard at the scene of offence, SI proceeded to Government Hospital, Ponnur where he came to know that Head Constable 690(PW.20) had already recorded the statement from the complainant. The statement of PW.1 was recorded at 6 p.m. as was stated by PW.23, IO in his deposition. The information of offence having been received by Police within one hour and statements of witnesses were recorded by 6 p.m. in the presence of PW.1 at the Hospital corroborates the prosecution case of occurrence at 4 p.m. and shifting of injured to the Hospital immediately. The injured Siva Sankara Rao had died at Ponnur Hospital between 5.30 to 6 p.m., inquest report of which was also prepared immediately. We are, thus, of the view that the Trial Court without any valid reason has discarded the evidence of PW.1 and the High Court did not commit an error on placing reliance on PW.1 who made statement and gave detail of entire incident in his statement and details of the accused and manner of carrying out the assault on both the deceased and injured witness.

27. With regard to PW.2, the Trial Court states that when PW.21, Sub- Inspector went on the scene of offence, he did not find PW.2 present on the scene whereas PW.1 has informed that while taking the second deceased and PW.5 to Government Hospital, Ponnur, PW.2 was asked to present near the dead body of first deceased. The statement of PW.2 being recorded at Government Hospital, Ponnur his presence at Ponnour Hospital cannot be discarded. We are of the view that only due to the reason that he was not found at the place of occurrence when PW.21 visited the spot does not lead to the conclusion that his eye-witness account be discarded.

28. The Trial Court has observed that prosecution did not try to establish the fact that on 10.10.2003, i.e., on the date of incident these witnesses and the deceased were required to be present before the Ponnur Court. The Trial Court further stated that presence of some witnesses at Ponnur Court was not necessary particularly Kalyani, PW.6 daughter of the first deceased. It has come in the evidence that all the persons who were returning from Ponnur Court, presence of few of them was not necessary at Ponnur Court. It has come in the evidence that second deceased and some other who were returning on 10.10.2003 were under the conditional bail and were to appear before the Court once in a week. The mere fact that some other persons were not required to be present in the Court also went along with those who were to go to the Court is neither unnatural nor uncommon. In the accused accompanying by the other members of the family while going to the Ponnur Court nothing is abnormal on the basis of which any adverse inference can be drawn by the Trial Court.

29. One of the submissions raised by the learned counsel for the appellants is that Doctor who appeared before the Court was not shown the weapon to give his opinion as to whether injuries could have caused with such weapon or not. Learned counsel for the appellants relied on the case in Kartarey and others vs. State of U.P., 1976 AIR SC 76=(1976 (1) SCC 172 para 26), wherein in paragraph 25 following has been stated:

> "25.....It is the duty of the prosecution, and no less of the Court, to see that the alleged weapon of the offence, if available, is shown to the medical witness and his opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so may, sometimes, cause aberration in the course of justice....."

30. In the present case Dr. N. Subba Rao, PW.17 appeared before the Court who had conducted the postmortem of Tirupati Rao. Doctor in his statement has stated that the injuries could be caused with battle axes and knives. PW.18 has conducted the postmortem of Siva Sankara Rao. PW.18 has stated that "injuries noted in my postmortem can be caused by axes, battle axes and knives". The eye-witnesses in their eye-witness account have stated that accused used axe, knives and sticks while attacking on deceased Nos.1 and 2. The injuries noted in the postmortem of deceased Nos.1 and 2 are injuries which can be caused by axe, knives and sticks. Thus, there was no inconsistency with medical evidence and the ocular evidence. The death of both deceased Nos.1 and 2 was homicidal in nature. A perusal of the statements of the PW.17 and 18, Doctors who conducted the postmortem as well as PW.16 who gave evidence on injuries of PW.5, indicates that they were not shown the weapons by which injuries were caused. It is useful to refer to the external injuries noted by PW.17

on the dead body of Tirupati Rao. In the statement of PW.17, he stated as follows:

> "On 11-10-2003 at about 3-1 p.m., I conducted postmortem on the dead body of a male body by name Somarouthu Tirupathirao, first deceased. The external appearance regormortis passed of External injuries:-
>
> Cut injury of 11x2x1 cm., in oblique direction over the left ear lobule extending towards temporal region and downwards towards neck.
>
> Cut injury 12x4 cm., bone deep on left parity occipital region. Deep dissection shows linear fracture of left parital bone.
>
> Cut injury of 5x2 cm., scale deep on left front parital region.
>
> Cut injury of 10x5 cm., skin deep on left thigh:
>
> Cut injury of 20x2 cm., x2.5 cm., from dorsum of right forearm to the dorsum of hand. Deep dissection shows both radius and ulna fractured.
>
> Cut injury 8x5 cm., skin deep over upper 1/3rd of upper arm.
>
> Cut injury of 8 cm., x 3x3 4 cm., encircling left shoulder deep dissection shows displacement head of humorous posterior.
>
> Cut injury of 7 cm., x 2 x 2 cm., on the back of left shoulder region.
>
> A crushed inury on left leg 22 x 10 cm. bone deep. Deep dissection shows both tibia and fibula fractured.
>
> A cut injury of 8 cm. x 3 cm., bone deep in the middle of right thigh. Deep dissection shows of right femur fracture at middle.
>
> Cut injury of 10x2cm., skin deep on left inter scapular area on left of back of chest.
>
> Cut injury of 10x2 cm., skin deep on back of chest below injury no.11.
>
> Cut injury of 10x2 cm., skin deep on right side of back of chest.
>
> Stab injury of 6x2 cm., on right lumbar region and deep dissection shows a lacerated injury of 2x1 cm., over right kidney on superior lateral region.

An abrasion injury 4 cm., size on back of right thigh."

31. Looking to the injuries as noticed by PW.17, it is clear that the cut injuries as noticed above could be by axe and knife as well as by battle axe as opined by the Doctor. The fact that weapon was not shown to the Doctor nor in the cross-examination attention of the Doctor was invited towards the weapon, is not of much consequence in the facts of the present case where there was clear medical evidence that injuries could be caused by knife, axe and battle axe. It is not the contention before us that the injuries as noted by the Doctors in the postmortem of deceased Nos.1 and 2 could not have been caused by knives and axes. The submission has also been raised that it was put to the Doctor that injuries by battle axe could be half moon, Doctor himself admitted in his report that he has not reported depth of the injury, middle of the injury nor margins of the injuries have been noted. He has not described any injury as the half moon. Doctor himself has admitted that he has not described the shapes of the injuries, depth and middle of the injuries. The above medical evidence does not lead to the conclusion that injuries as noticed by the Doctors could not have been caused by axe, knives and battle axe. The eye-witnesses, PW.1,2,3 and 5 have clearly mentioned about the weapons used by the accused which eye-

witnesses accounts are in accordance with medical evidence. Thus, mere non- showing of the weapons to the Doctors at the time of their depositions in the Court is inconsequential and in no manner weakens the prosecution case. Some discrepancies referred by the Trial Court in the statements of eye- witnesses were inconsequential. The eye-witnesses after lapse of time cannot give picture perfect report of the injuries caused by each accused and the minor inconsistencies were inconsequential. It is useful to refer to the judgment of this Court in Chandrappa and others vs. State of Karnataka, (2008) 11 SCC 328. In paragraphs 17 and 18 following was stated:

"17. It has been contended by the learned counsel for the appellants that the discrepancies between the statements of the eyewitnesses inter se would go to show that they had not seen the incident and no reliance could thus be placed on their testimony. It has been pointed out that their statements were discrepant as to the actual manner of assault and as to the injuries caused by each of the accused to the deceased and to PW 3, the injured eyewitness. We are of the opinion that in such matters it would be unreasonable to expect a witness to give a picture perfect report of the injuries caused by each accused to the deceased or the injured more particularly where it has been proved on record that the injuries had been caused by several accused armed with different kinds of weapons.

18. We also find that with the passage of time the memory of an eyewitness tends to dim and it is perhaps difficult for a witness to recall events with precision. We have

gone through the record and find that the evidence had been recorded more than five years after the incident and if the memory had partly failed the eyewitnesses and if they had not been able to give an exact description of the injuries, it would not detract from the substratum of their evidence. It is however very significant that PW 2 is the sister of the four appellants, the deceased and PW 3 Devendrappa and in the dispute between the brothers she had continued to reside with her father Navilapa who was residing with the appellants, but she has nevertheless still supported the prosecution. We are of the opinion that in normal circumstances she would not have given evidence against the appellants but she has come forth as an eyewitness and supported the prosecution in all material particulars."

32. Learned counsel for the appellants has also placed reliance on the judgment of this Court in Eknath Ganpat Aher and others vs. State of Maharasthra and others, (2010) 6 SCC 519. In support of the case it is mentioned that in the case of group rivalries and enmities, there is a general tendency to rope in as many persons as possible as having participated in the assault. There cannot be any dispute to the above proposition laid down in paragraph 26 of the judgment which is quoted below:

"26. It is an accepted proposition that in the case of group rivalries and enmities, there is a general tendency to rope in as many persons as possible as having participated in the assault. In such situations, the courts are called upon to be very cautious and sift the evidence with care. Where after a close scrutiny of the evidence, a reasonable doubt arises in the mind of the court with regard to the participation of any of those who have been roped in, the court would be obliged to give the benefit of doubt to them."

33. However, when there are eye-witnesses including injured witness who fully support the prosecution case and proved the roles of different accused, prosecution case cannot be negated only on the ground that it was a case of group rivalry. Group rivalry is double edged sword.

34. Learned counsel lastly contended that there are limitations in the appellate power while exercising it as against an order of acquittal. He has relied on the judgment of this Court in Dhanpal vs. State by Public Prosecutor, Madras, (2009) 10 SCC 401. In paragraphs 21, 22 39 and 41 following has been stated:

"21. On proper evaluation of the Trial Court judgment, we hold that the view taken by the Trial Court was certainly a possible or a plausible view. It is a well-settled legal position that when the view which has been taken by the Trial Court is a possible view, then the acquittal cannot be set aside by merely substituting its reasons by the High Court. In our considered view, the impugned judgment of the High Court is contrary to the settled legal position and deserves to be set aside.

22. The earliest case which dealt with the controversy in issue at length is of Sheo Swarup v. King Emperor. In this case, the ambit, scope and the powers of the appellate court in dealing with an appeal against acquittal have been comprehensively dealt with by the Privy Council. Lord Russell writing the judgment has observed as under: (IA at p. 404):

"... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses." The law succinctly crystallised in this case has been consistently followed in subsequent judgments by this Court.

39. The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the Trial Court. The Trial Court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the Trial Court's conclusion with respect to both facts and law, but the appellate court must give due weight and consideration to the decision of the Trial Court.

3. The appellate court should always keep in mind that the Trial Court had the distinct advantage of watching the demeanour of the witnesses. The Trial Court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the Trial Court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused.

41. The settled legal position as explained above is that if the Trial Court's view is possible or plausible, the High Court should not substitute the same by its own possible view. In the facts and circumstances of this case, the High Court in the impugned judgment was not justified in interfering with the well-reasoned judgment and order of the Trial Court.

Consequently, this appeal filed by the appellant is allowed and disposed of and the impugned judgment of the High Court is set aside."

35. In State of U.P vs. Anil Singh, (1988)(Supp). SCC 686, this Court has held that although when two views are reasonably possible, one indicating conviction and other acquittal, this Court will not interfere with the order of acquittal but Court shall never hesitate to interfere if the acquittal is perverse in the sense that no reasonable person would have come to that conclusion, or if the acquittal is manifestly illegal or grossly unjust. In paragraph 14 of the judgment following has been stated:

> "14. The scope of appeals under Article 136 of the Constitution is undisputedly very much limited. This Court does not exercise its overriding powers under Article 136 to reweigh the evidence. The court does not disturb the concurrent finding of facts reached upon proper appreciation. Even if two views are reasonably possible, one indicating conviction and other acquittal, this Court will not interfere with the order of acquittal (See: State of U.P. v. Jashoda Nandan Gupta; State of A.P. v. P. Anjaneyulu.) But this Court will not hesitate to interfere if the acquittal is perverse in the sense that no reasonable person would have come to that conclusion, or if the acquittal is manifestly illegal or grossly unjust."

36. Present is a case where the High Court exercised its appellate power under Section 386 Cr.P.C. In exercise of Appellate power under Section 386 Cr.P.C. the High Court has full power to reverse an order of acquittal and if the accused are found guilty they can be sentenced according to law.

37. Present is a case where reasoning of the Trial Court in discarding the evidence of injured witness and other eye-witnesses have been found perverse. The High Court, thus, in our opinion did not commit any error in reversing the order of acquittal and convicted the accused. From the eye-witnesses account, as noticed above and for the reasons given by the High Court in its judgment, we are of the view that High Court is correct in setting aside the order of acquittal and convicting the accused.

38. There is no merit in these appeals. Both the appeals are dismissed.

.....J. (A. K. SIKRI) .....J. (ASHOK BHUSHAN) New Delhi, April 13, 2017.