

Ravulappalli Kondaiah And Ors. vs State Of Andhra Pradesh on 20 November, 1974

Equivalent citations: AIR1975SC216, 1975CRILJ262, (1975)3SCC752, AIR 1975 SUPREME COURT 216, (1975) 3 SCC 752, 1975 SCC(CRI) 213, 1976 MADLJ(CRI) 21, 1975 2 SCJ 499

Bench: R.S. Sarkaria, Y.V. Chandrachud

JUDGMENT

R.S. Sakaria, J.

1. The Appellants were tried and acquitted by the Additional Sessions Judge, Nellore, of offences under Sections 302/149, 148 and 324, Penal Code for causing the death of Vengaiah and injuries to P. Ws, 2 and 3. On appeal by the State, the High Court reversed the acquittal and convicted all the six accused under Section 302 read with Section 149 and sentenced each of them to suffer imprisonment for life. They were further convicted under Sections 326/149, Penal Code and under Sections 324/149, Penal Code for the injuries caused to P.W. 3 and P.W. 2 and sentenced to rigorous imprisonment. Hence this appeal.

2. The facts of the prosecution case were these.

3. In village Kurrapalli, there are four Kamma ryot families which are divided into two warring factions. The appellants belong to one faction. They are all interrelated. Accused 6 is the mother, A-1 and A-2 are her sons. A-4 is A-6's brother-in-law's grandson. A-5 is her son-in-law. A-3 is the first cousin of A-1 and A-2. Excepting A-3, all the appellants live together. P. Ws. 1 to 5 are also inter related. They belong to the rival faction. The house of P. Ws. 1 to 5 and the deceased are separated by a narrow lane from the houses of the appellants. Estrangement between the two factions commenced about four years before the occurrence, when the appellants purchased a field known as Mangalavani Chenu. Convenient passage to the hayrick yards of the P. Ws. and other members of their faction lay through this field. The appellants denied that passage. As a counter blast, the faction of the complainant did not allow the appellants to go across their southern lane to fetch water from the well, There was also criminal litigation between the two factions.

4. On January 28, 1969, P. Ws. 1 and 4 were bringing earth in their bullock-carts to their house. When the cart reached near the house of A-1, A-2 and A-6 obstructed its passage and forced P. Ws. 1 and 4 to unload the cart there. P. Ws. 1 and 4 complained to Vengaiah, deceased. He advised them to avoid a clash and to bring the earth in head-loads by breaking open a passage through the wall of Ramilla Lakshamma belonging to their own faction.

5. On the following day, there was a quarrel, over the making of the passage, between A-6 and her sister Chennamma on one side, and P.W. 1's mother on the other. During that quarrel, Chennamma sustained an injury. At this juncture, Vengaiah came on the scene. He rebuked the parties. Chennamma made a complaint to the Truine Officer alleging that she had been assaulted by P.W. 1 with a crowbar. The officer forwarded that complaint to the Police Station, Udayagiri. The Head-Constable (P.W. 12) who was then in-charge of the Police Station, called P.W. 1, through a constable, to the Police Station. After interrogation, he allowed P.W. 1 to go at about 8 P. M. After making inquiries from Chennamma, the Head-Constable informed her that the case was non-cognizable, and that she could, if she so desired, seek redress by a private complaint made in court.

6. On January 30, 1969, P. Ws. 1 and 4 brought two cartloads of earth by another route known as Vaddeveedhi. Leaving the cart in the open place near the house of A-1, P. Ws. 1 and 4 went into their house to take breakfast. In the meanwhile, the bullocks dragged the unattended cart into the open space in front of the house of A-1. The appellants were sorely annoyed. P, Ws. 1, 4 and 5 and R. Lakshamma pleaded that they were not to be blamed for that mischief committed by the animals. The appellants were in rage. They spured the explanation offered by the P. Ws. and unyoked the bullocks. P Ws. 1 and 5 tried to reyoke the animals in order to take away the cart. All the appellants, who were then present in the compound, abused and stoned the P. Ws. At this juncture, Vengaiah deceased arrived there. He interceded and advised the appellants to settle their dispute amicably and to refrain from violence. The appellants pounced upon the deceased and dragged him further into the compound. A-1 hit the deceased with a rice-pounder on the head, felling him to the ground. A-3 gave an axe blow on the back of the deceased, while A-2 stabbed him on the left side with a spear, A-4 also struck the deceased with a rice-pounder. Simultaneously, A-5 and A-6 gave stick-blows on the arm of the deceased. P.W. 2, wife of the deceased, rushed in shouting to the assailants to desist from the assault. A-3 hit her with an axe on the head, A-2 struck a spear blow on her right ear and temple. A-6 and A-4 hit her with sticks. P.W. 3, came to the rescue of the victims. But the appellants gave him a beating with their respective weapons. Chased by the appellants, P.W. 1 took to his heels and hid himself. The appellants then ran away leaving Vengaiah dead and P. Ws, 2 and 3 injured at the scene.

7. After the departure of the assailants, P.W. 1 returned to the scene. Leaving the dead body at the spot, P.W. 1 arranged the removal of the injured to the house of P.W. 3. Thereafter, P.W. 1 went to village Sakunalapalli to inform the Truine Officer (P.W. 10). The latter was away in his fields. P.W. 1 waited there. At about 2 p. m., the Officer returned home. P.W. 1 then appraised him of the occurrence, P.W. 10 recorded the report (Exh. P-1), read it over to P.W. 1 and obtained his signature thereunder. P. Ws. 1 and 10 then came to Kurrapalli. There, after seeing the dead and the injured, P.W. 10 prepared the printed reports (P-14 and P-15) and sent them to the Police Station, Udayagiri through a messenger. On receiving the reports at 6 P. M., in the Police Station, P.W. 13, the Sub-Inspector registered the F. I. R., and then at 7 P. M. proceeded to the place of occurrence. On reaching the village at about 8.30 p. m., the Sub-Inspector found the dead body of Vengaiah lying in the compound of A-1. He then went to the house of P.W. 10. He examined the injured, P. Ws. 2 and 3, and sent them to the Government Hospital, Udayagiri. He then recorded the statements of P. Ws. 1 and 5. On the following morning he prepared the inquest report and sent the same along with the

dead body to Udayagiri for post-mortem examination.

8. P.W. 8, Dr. Rama Rao conducted the autopsy. He found five injuries on the dead-body. Injury 1 was a contusion, 3-1/2" x 2-1/2" x 1" on the right temple. Injury 2 was an incised wound on the left scapular region extending transversely upto the middle on the back, 4" x 1" x 2". Injury 3, also, was an incised wound on the left lateral aspect of abdomen. Its dimensions were: 4"x 1/4" x 1.". Injury 4 was a contusion on the occipital bone of the skull, 2" x 1/2" x 1/2". Injury 5 consisted of two parallel contusions on the lateral aspect of left upper arm, one admeasuring 3" x 1/2" x 1/6" and the other, 2" x 1/2" x 1/6". Injuries 1 & 4 were sufficient to cause death in the ordinary course of nature. Dr. Rao, examined P.W. 3 also. He found 16 injuries on his person. Injuries 1 and 2 which were lacerated injuries located on the head, could have been caused, in his opinion, with the blunt edge of an axe; injuries 3, 4 and 6, located on the right ear and right elbow joint, could have been caused with a spear and the rest of the injuries with a blunt object.

9. The Doctor found 5 injuries on the person of P.W. 2. Of them, injury I could have been caused with an axe and injuries 2, 3 and 5 with a spear and the rest with a stick.

10. The plea of the appellants, was one of denial of the prosecution case. A-2 and A-3 pleaded alibi. They stated that at the material time, they were in the Government Hospital, Nellore, attending on Chennamma, and knew nothing about the incident in question. A-1 plead ed that on the 29th January, following an altercation, P.W. 1 had beaten Chennamma with a crowbar. A-2 and A-3 took Chennamma to the Hospital at Udayagiri and stayed there. On the 30th January, in the morning, Vengaiah deceased drove his loaded cart through their yard. A-1 objected and unyoked the bullocks. The deceased and P. Ws. 2, 3, 4 and 5, who were armed with sticks and spears, pounced upon A-1. The latter, however, dashed into his house and bolted the door from inside. The deceased proclaimed that they would burn the house and shouted to his companions to fetch-kerosene. Apprehending that they might be burned inside, A-4, A-5 and A-6 opened the door and came out armed with some weapons. The deceased charged towards them with a spear. In self-defence, A-4, A-5 and A-6 assaulted the deceased. Some villagers came and rescued them. For fear of being beaten, A-1, A-4, A-5 and A-6 ran away. A-4, A-5 and A-6 adopted this version of A-1 which he had given in the committal court.

11. The Sessions Judge accepted the alibi set up by A-2 and A-3 on -what he called - a "consideration of probabilities", even though it was not, in his opinion, a "fool proof alibi". The Judge further held that A-1, A-4, A-5 and A-6 had made out the plea of private-defence. He also found that there was huge delay in reporting the matter to the Truine Officer. He disbelieved the presence of P.W. 1 at the scene of occurrence. He discounted the entire evidence of the eye-witsses on the ground that they were partisan witnesses, and the account given by them was not fully consistent with regard to weapons carried by the accused, and the precise place where Vengaiah fell. In the result, he acquitted all the accused.

12. The High Court found that these findings of the learned trial Judge were perverse. It, therefore, reversed them and convicted all the appellants.

13. Learned Counsel for the appellants contends that the High Court was in error in setting aside the well-considered judgment of the trial court. It is submitted that the FIR in this case was registered after an inordinate delay which had not been satisfactorily explained and there was every reason to suspect that it had been prepared at the spot after deliberation with the Truine Officer. The finding of the trial court, proceeds the argument, that P.W. 1 was not an eye-witness of the occurrence, was founded on unassailable grounds. Once it was shown, says the counsel, that P.W. 1 was not an eye-witness and the F.I.R. was not a true and spontaneous account given by an eye-witness, the entire case of the prosecution, as rightly observed by the trial court, was bound to collapse "like a house of cards". It is maintained that the partisan and inimical evidence of the alleged eye-witnesses was so replete with discrepancies and contradictions that it could not be safely acted upon. The point sought to be made out is that since the view of the evidence taken by the trial court was also reasonably possible, the High Court was not justified in reversing the acquittal, irrespective of whether the accused had made out the special defences set up by them, or not.

14. We have carefully gone through the material portions of the record with the aid of the Counsel. So far as the acquittal of A-1, A-2 and A-3 is concerned, we are in agreement with the High Court, that the Order of acquittal recorded by the trial court, was utterly unsustainable. But the same, as we shall presently discuss, cannot be said about the acquittal of A-4, A-5 and A-6.

15. The occurrence took place at about 10 a. m. in village Kurrapalli. The report, Ex. P/1, about it was given by P.W. 1 to the Truine Officer at village Sakunalapali at 2 p. m. P.W. 1 explained that "when he reached the house of Truine Officer, the latter was not there. He had, therefore, to wait there for sometime before he could report to the Officer on his return. Even the Truine Officer, P.W. 10, who had turned hostile to the prosecution, corroborated P.W. 1 inasmuch as he (P.W. 10) stated in examination-in-chief that when he returned home from the fields at 2 p. m., P.W. 1 was waiting for him at his house. Because of the preceding day's incident in which Chennamma received an injury, the appellants must have been vindictively disposed towards P.W. 1, also. That was why when Vengaiah was being beaten inside the compound of A-1, P.W. 1, as stated by him, remained outside raising an alarm. He did not go inside to rescue the deceased, even when the wife, P.W. 2, and the father-in-law, P.W. 8, went ahead imploring the assailants to desist from the assault. He saw that even the entreating woman and the old man had not been spared by the assailants. He heard A-2 and A-3 yelling: "Where is Pende Malkendiah (P.W. 1)? Frightened, P.W. 1, ran and escaped through the southern entrance and hid himself. He says, he did not come out of the hiding till the accused had all gone away towards the north carrying their weapons with them. With Vengaiah the strong man of the faction dead and two others lying injured at the scene, P.W. 1, an illiterate raw youth of 20 was left alone terror-stricken and confused. Naturally in that state of mind, the first thing he did was to arrange the removal of the injured to the house of P.W. 2. Next he must have taken some time to collect his wits before proceeding to village Sankhanpalli for informing the Truine Officer. There was nothing unusual, therefore, if P.W. 1 departed for village Sankhanpalli about 2 or 3 hours after the occurrence. Further time was taken in going to Sankhanpalli and then in awaiting the return of the Truine Officer from the fields. Thus sufficient explanation of the delay in making the report was available.

16. In cross-examination, the defence had suggested to P.W. 1 that throughout the night between the 29th and 80th of January, the witness was in the Police lock-up at Udayagiri and further, he was not present at the scene of offence. The suggestion was denied by the witness. The trial court, however, appears to have accepted this suggestion, mainly because in cross-examination, the witness was unable to tell, with precision, the bus by which he returned to his village and the route taken by that bus. In our opinion, much capital could not be made out of it. The witness was an illiterate rustic. The point of substance was whether on the morning of the 80th January, his presence in village Kurrapalli was probable. There was reliable, independent evidence to show that P.W. 1 was allowed to go from the Police Station at 8 p. m. on the 29th. Dr. Rao, P.W. 8, testified that the injury received by Chennamma was a simple injury. The Head-constable (P.W. 12) stated that he had allowed P.W. 1 to go after giving him a warning as the offence was non-cognizable. The Head-constable contemporaneously at 8 p. m., on the 29th, made an entry to that effect in the General Diary of the Police Station. After being permitted to go at 8 p. m., P.W. 1 was not likely to stay overnight at Udayagiri. He had no place of residence or other place of business at Udayagiri. His village was hardly 6 miles away. He could easily cover that distance on foot in 1 1/2 hrs. Moreover, Udayagiri was the seat of Taluka and several buses were plying on that route. P.W. 1 stated that the last bus left Udayagiri at 9 or 9-30 p. m. The Sub-Inspector (P.W. 13) however, stated in cross-examination that the last bus used to leave Udayagiri at 6 or 6-30 p. m. It was merely on the basis of this statement of P.W. 13, that the trial court held that the version of P.W. 1 about the time of departure of the bus was false. This finding was not well-founded. Nor could it be logically deduced therefrom that P.W. 1 must have stayed overnight at Udayagiri.

17. Assuming for argument's sake that P.W. 1 had stayed for the night at Udayagiri, then also his natural conduct would be to return home early next morning, he having nothing to do at Udayagiri on the 30th. On cycle he could easily cover that distance within an hour. From whatever angle the matter may be looked at, the presence of P.W. 1 at about 10 a. m. of the 30th on the scene of occurrence was highly probable.

18. Besides P.W. 1, there were four eye-witnesses namely, P.W. 2, P.W. 3, P.W. 4 and P.W. 5 who had fully supported the prosecution story at the trial. P. Ws. 2 and 3 were injured witnesses. Their presence at the place of the incident could not be doubted. P. Ws. 4 and 5 were also residents of the vicinity. Their presence at the scene of occurrence was highly probable. Moreover their presence was admitted by A-1, A-4 to A-6. The witnesses were undoubtedly relations or partisans of the deceased. That, by itself, does not make their evidence unreliable. It only puts the Court on guard to scrutinise their evidence with more than ordinary care. The over-all question before us being whether the High Court was justified in reversing the acquittal of all the accused, the evidence of these witnesses is to be tested from that standpoint in the light of the other evidence on record.

19. We will revert to a discussion of their evidence later. Suffice it to say now, that the story narrated by them is not intrinsically incredible or inherently improbable in the main.

20. At this stage, it will be appropriate to dispose of the alibi pleaded by A-2 and A-3.

21. In support of this plea, A-2 and A-3 chiefly relied upon the evidence of P.W. 10 and D. W. 1. P.W. 10 stated that he had seen A-2 and A-3 attending on Chennamma in the Hospital at Udayagiri at 8-30 a. m. on 30-1-69. They said that they were waiting for the wound certificate of Chennamma to file a private complaint. After talking to them for ten minutes, the witness came to the Bus-stand and proceeded to his village by bus at about 9 a. m. After going home he went to his land. When he returned to his house at 2 p. m, P.W. 1 was there waiting for him. P.W. 10 then scribed the report made to him by P, W. 1.

22. P.W. 10 was present when the inquest report, Exh. P-16, was prepared. He was examined by the Investigating Officer under Section 161, Criminal P. C. Cross-examined, P.W. 10, at first took up the position that excepting P.W. 1, whom he questioned about it at the time of scribing the report Exh. P-1, he did not tell anyone else that he had seen A-2 and A-3 at Udayagiri at about 8-30 a. m. on the 30th. Nor did he note this fact in Exh. P-1, Ex. P-4 and Ex. P-5. He then shifted his position and said that at the inquest he had told the Sub-Inspector (P.W. 13) about the presence of A-3 and A-4 at the Hospital. On this point, his evidence was falsified by P.W. 13, who stated that nothing of this kind was mentioned to him either at the inquest or subsequently, by P.W. 10. In his police statement P.W. 10 had stated that on 30-1-1969, at about 7 a. m., he had gone to his fields and returned home from there at 2 p. m. Confronted with his police statement, witness disowned it blatantly. The witness was declared hostile to the prosecution and was cross-examined by the Prosecutor. It was evident that the witness had come out with that version for the first time in an attempt to help the defence. The High Court was therefore, right in holding that "P.W. 10 is giving false evidence to support the plea of alibi set up by A-2 and A-3.

23. The star witness of the defence with regard to this plea of alibi was D. W. 1, a "Cycle-runner" of the postal. Department. His evidence was that on 30-1-1969 at 9-30 a. m., he had come to Kurrappalli Post Office from Sakunalapalli on his bicycle. The witness inquired from the Post Master about a disturbance that was taking place at the house of A-1. The Post Master told the witness that Vengaiah, deceased, armed with a spear, had pursued A-1 and A-6 into A-1's house. The Post Master, however, advised the witness to mind his own business. D. W. 1 then proceeded to Udayagiri Post Office. When he was cycling past the Hospital at Udayagiri, at about 10-30 a. m. he saw A-2 and A-3 sitting at the main gate.

24. D. W. 1 was a native of village Kurrappalli although he was, at that time, residing at Sakunalapalli owing to the exigencies of service. His conduct in asking the Post Master as to what was happening, was not the natural conduct of a person who sees an occurrence of this type in his own village. The Post Master was not examined. The evidence of D. W. 1 therefore, in so far as it purported to be derived from the Post Master, was no better than mere hearsay. Furthermore, D. W. 1 wanted to have it believed, that when he met A-2 and A-3 at the Hospital, they were totally unaware of the occurrence in question, and the witness was the first to inform them how Vengaiah and others had entered the house of A-1 to assault the inmates. A-2 and A-3 in their statement under Section 342, Criminal P. C, while pleading alibi, did not say that they had learnt about this occurrence from D. W. 1. Thus the witness had tried to be more Royalist than the King. The evidence of D. W. 1 was too flimsy to inspire confidence.

25. Assuming for a moment that A-2 and A-3 were seen at the Hospital at 10-30 a. m. on the 30th, then also, that by itself would not discount their participation in the assault on the deceased 30 or 40 minutes earlier. Kurrapalli was hardly six miles from the Hospital and was connected by metalled road on which buses and other vehicles plied. If D. W. 1 could in the ordinary course, cover this distance in about one hour, surely A-3 and A-4 who had a motive to get away faster could do the same in 30 to 40 minutes.

26. The evidence of D. Ws. 2 and 3 was of negative character. They stated that they had not seen A-2 and A-3 at the scene of occurrence. These two witnesses were examined primarily to substantiate the plea of private defence. They came forward with the story, that the deceased armed with a spear and accompanied by P.W. 4 and P.W. 5, chased A-1 and A-4 into the hayriyard of A-1. A-1 and A-6 bolted the door from inside. The deceased and his companions pounded at the door. The deceased threatened to burn the house along with the inmates. At his instance, P.W. 4 brought a bottle of kerosene. The door was then opened. Vengaiah entered in a charging position. The inmates and those outside beat Vengaiah; P.W. 2 and P.W. 3 also dropped. Then everybody fled away, including A-1, A-4, A-5 and A-6.

27. D. W. 2 is an attesting witness of the inquest report. In cross-examination, after some prevarication, he stated that he did not tell the Investigating Officer about these facts which he had for the first time disclosed in Court. While admitting his signature on the inquest report, the witness said that he had signed a blank form. This was contradicted by P.W. 10 who stated that he had signed the report, P-16, after it had been entirely written out in his presence. The Sessions Judge also did not believe the version of D. W. 2, that his signature was obtained on a blank paper by the Investigating Officer. In spite of this glaring falsehood going to the root of the matter, it is surprising that the Sessions Judge accepted his evidence to hold that the plea of alibi was 'probably true'. The High Court's assessment that the statement of this witness was "a bare-faced lie" was thus not unjustified.

28. Equally worthless was the evidence of D. W. 3. He was a school teacher. He also did not come forward and tell the Investigating Officer what he had long after stated in Court. His omission to do so condemns his testimony as an afterthought.

29. For these reasons, we are at one with the High Court that A-2 and A-3 had miserably failed to substantiate the alibi set up by them.

30. We will now consider the plea of self-defence set up by the appellants, and in that context, examine the evidence of P. Ws. further.

31. The very story that the deceased and P. Ws. 2, 3, 4 and 5, armed with sticks and spears, went to the house of A-1, to belabour the appellants appears to be highly improbable. If five persons armed with deadly weapons had raided the house of A-1, to assault the inmates it is inconceivable that they would tamely take all the beating, without causing even a scratch to their adversaries. The absence of any injury whatever on the side of the appellants, was itself eloquent enough to discount the plea of private defence. As rightly pointed out by the High Court, the very fact that P.W. 2, the wife, and

P.W. 3, the father-in-law of the deceased, received injuries, and not P. Ws. 4 and 5, indicates that only P. Ws. 2 and 3 went inside, and that, too, for rescuing the deceased. P. Ws. 4 and 5 (whose presence at the scene was admitted by A-1 and A-4 to A-6) never entered the compound of A-1.

32. We would therefore, endorse the view taken by the High Court, that the defence version about the prosecution party being the aggressor was not true.

33. One of the reasons given by the Sessions Judge for rejecting the prosecution case was that there were 'vital contradictions' in the evidence regarding the weapons used by the accused. He noticed that on some points the medical evidence was in conflict with the ocular account of the eye-witnesses. Without going into details, the High Court held that, in the first place, only one contradiction had been pointed out to them; Secondly, the contradictions were "both natural and trivial" and did not "lead to any inference which can possibly touch upon the veracity of the eye-witnesses.

34. We are unable to agree with the High Court that these contradictions were "trivial" and of no consequence whatever. We cannot overlook the fact that all the eye-witnesses were highly interested in the prosecution, and, at least two of them, namely, P.W. 1 and P.W. 4 were inimically disposed towards the appellants. While such witnesses never fail to denounce the real culprits,, they cannot be said to be absolutely immune from the tendency of roping in some innocent persons along with the guilty. In the present case, where the assailants did not spare even a woman and an old man who had interceded merely to save the deceased, the temptation to implicate, in addition to the actual assailants, their women and other relations would be real, It is in this context that these contradictions assume [importance. As a matter of caution, therefore, the Court should seek some assurance of this interested evidence from independent source qua each of the accused. Here, medical evidence was the chief source which could furnish such assurance.

35. We may recall that A-6 is the mother of A-1 and A-2. She is an old woman of 70 years. A-1 and A-5 are her grandson and son-in-law, respectively.

36. In the report 'Ex. P-1, P.W. 1 had not particularised the part played by each of these three accused (A-4, A-5 and A-6) in the assault on the deceased. After stating that A-1, A-2 and A-3 gave blows to the deceased with a pestle, axe and spear on the head (temple) back and left flank, respectively, P.W. 1 said 'The remaining three beat with sticks'. In variance with the report Ex. P-1, at the trial P.W. 1, after referring to the dragging, stated:

Then A-1 beat the deceased with a Rice Pounder. Deceased fell on his right side with face down saying Amma. A-3 hacked him on the left side of the back with the axe. A-2 with a spear, stabbed Vengaiah on the left side. Then A-4 beat Vengaiah on the head with a Rice Pounder. Then A-5 with a stick hit him on the left upper arm. At the same place A-6 also beat him with a stick.

P.W. 1 was duly confronted with his previous statements. It will be seen that P.W. 1 had made significant 'improvements' upon his earlier statement (viz., the report, Ex.

P-1, and his statement under Sections 161/162, Criminal P. C.) regarding the weapon carried by A-4 and the precise part attributed to A-4, A-5 and A-6, each, in belabouring the deceased. On these points, the version of P.W. 3 also, in his police statement was more or less the same as 'that of P.W. 1 in the report, Ex. P-1. At the trial. P.W. 3 also changed the 'stick' of A-4 into a "pounder", and specified the individual acts of A-4, A-5 and A-6 in the attack on the deceased, exactly in the same manner in which P.W. 1 had done.

37. It is significant, that: at the trial, the account given by all the five eyewitnesses was almost identical in regard to the sequence and number of blows, the weapons, and the specific parts of the body of the deceased hit by the individual accused,

38. We will now consider as to how far the medical evidence confirms the ocular evidence regarding the injuries of the deceased. Only injuries 1, 4 and 5, as noted by Dr. Rama Rao, were contusions. Injury 1 was located on the right temple and injury 4 on the occipital region. This means, both these injuries were head injuries. Injury 5 consisted of two parallel contusions which, in the Doctor's opinion, could be the result of two separate stick-blows. The Doctor was not questioned as to whether these twin contusions could be caused by a single blow given by a bludgeon or pestle having raised edges. Therefore, the possibility of injury No. 5 having been caused by a single blow with such a Pounder could not be ruled out. Dr. Rao while opining about the nature of the inflicting weapons, appears to have kept in mind the distinction between a contusion caused by a stick-blow and the one caused by a pestle-blow. In this context, he opined that the head-injuries 1 and 4 had been caused with a rice-pounder (pestle) and injury 5 with a stick. If the prosecution are kept to their original version and the subsequent 'improvements' are ignored, and if the Dr.'s opinion is correct, as it appears to be so, then injury No. 2 was not caused by A-4, he being, according to the original version, armed with a stick and not with a rice-pounder. A rice-pounder is a far heavier weapon than an ordinary stick. It will bear repetition that originally, no specific injury of the deceased was assigned by P.W. 1 to A-4, A-5 and A-6. It was therefore, not improbable that both the head injuries of the deceased were caused by A-1 with a rice-pounder. Difficulty also arises in apportioning the twin contusions of Injury No. 5 between the old woman (A-6) and her son-in-law (A-5). Although it cannot be doubted that all the six appellants were present inside the house of occurrence, the actual participation of A-4, A-5 and A-6 in the beating of the deceased is not free from reasonable doubt.

39. Regarding the part played by each of A-1, A-2 and A-3, in the fatal assault, the prosecution story has been consistent and constant throughout. No subsequent improvements or changes were made qua them by the eye-witnesses.

40. The medical evidence, also lends full assurance to the ocular evidence regarding the nature of the weapons used by these three accused in belabouring the deceased. The medical evidence shows that the injuries on P.W. 2 and P.W. 8 could be caused with the weapons carried by A-1, A-2 and A-3. In the Doctor's opinion, on P.W. .3, injuries 3, 4 and 7 had been caused with a spear, injuries 1 and 2 with the blunt edge of an axe, and the rest of the injuries with a blunt weapon or object. Similarly, on P.W. 2, according to the Doctor, injury 1 had been caused with an axe, injuries 2, 3 and 5 with a spear and the rest of the injuries with a blunt weapon.

41. In the light of the above discussion, the conclusion is inescapable that while it was proved to the hilt that A-1, A-2 and A-3 had, in furtherance of their common intention murdered Veogaiah and caused injuries to P.W. 2 and P.W. 3, the charges against A-4, A-5 and A-6 had not been established beyond all manner of doubt.

42. In the result we would set aside the conviction of A-4, A-5 and A-6, acquit them of all the charges and allow their appeal. We would further dismiss the appeal of A-1, A-2 and A-3 but alter their conviction to one under Sections 302, 326, 324 read with Section 34, instead of Section 149, Penal Code on each of the three counts, respectively. Their sentences on all the three counts are maintained.