

Nadodi Jayaraman Etc vs State Of Tamil Nadu on 28 April, 1992

Equivalent citations: 1992 SCR (2) 794, 1992 SCC SUPL. (3) 161, AIR 1993 SUPREME COURT 777, 1992 (2) SCR 794, 1993 SCC(CRI) 184, 1992 (3) JT 222, 1992 CRIAPPR(SC) 317, 1992 (3) SCC(SUPP) 161, (1992) 2 RECCRIR 164, (1992) 2 SCJ 599, (1992) ALLCRIR 479, (1992) 3 ALL WC 1754, (1992) 2 ALLCRILR 534, (1992) 2 CRIMES 286

Author: R.M. Sahai

Bench: R.M. Sahai

PETITIONER:
NADODI JAYARAMAN ETC.

Vs.

RESPONDENT:
STATE OF TAMIL NADU

DATE OF JUDGMENT 28/04/1992

BENCH:
ANAND, A.S. (J)
BENCH:
ANAND, A.S. (J)
SAHAI, R.M. (J)

CITATION:
1992 SCR (2) 794 1992 SCC Supl. (3) 161
JT 1992 (3) 222 1992 SCALE (1) 969

ACT:
Indian Penal Code, 1860 : Sections 302/120-B, 302/34 & 304
Part II:

Murder-Trade Union rivalry-Attack by a number of accused with iron rods and iron pipes-Trial-Conviction of some accused and acquittal of others-Reliance on testimony of witnesses vis-a-vis convicted accused and rejection of their testimony vis-a-vis acquitted accused-Legality of-Held where injuries are caused by a number of persons Court should ascertain the common intention of convicted accused-Nature of injuries and weapons used held relevant for determining the common intention-Conviction of accused altered from Sections 302/34 to one under 304 Part II.

Maxim-Falsus in uno falsus in omnibus-Applicability of. Penology-Conviction-Accused suffered imprisonment for more than five years and on bail for more than a decade - No

criminal activity by accused during this period-Held not desirable to send him back to jail-sentence reduced to imprisonment already undergone.

Constitution of India, 1950: Article 136:

Appeal by Special Leave-Reappraisal of evidence-Concurrent findings of facts by Court below-Interference with.

HEADNOTE:

The appellants, A-2 and A-3, along with five co-accused were prosecuted under Section 120-B read with Section 320 IPC as well as under Section 302 read with Section 34 IPC. Besides the co-accused were also prosecuted for various other offences. It was alleged that the accused persons conspired together to murder PC, Ex-Vice President of the Peravai Workers' Union, and in pursuance of the same committed his murder. According to the prosecution case there was trade union rivalry between the group of the deceased and the group of accused persons. The eye witnesses deposed that on the date of occurrence A-2 was questioning PW-22 as to why he had distributed pamphlets for a meeting to be

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conducted under the auspices of PC and at that time PC arrived there. Thereafter, A-2 to A-7 assaulted him with iron rods and iron pipes. Prosecution witnesses who tried to intervene also received injuries at the hands of accused persons. Further, when PC tried to escape the accused persons chased him and exhorted to do away with him and thereupon they again assaulted him indiscriminately with iron rods as a result of which he died. The Post Mortem report showed that the deceased suffered 32 injuries and that the head injury was sufficient to cause death in the ordinary course of nature.

The Trial Court did not accept the testimony of the prosecution witnesses in toto. It rejected the theory of conspiracy and accordingly acquitted all the accused persons including the appellants of the charges of criminal conspiracy under Section 120-B read with Section 302 IPC. However, relying upon the testimony of PW 19, 21, 22, 25, 26 and 27, it convicted both the appellants under Section 302 read with Section 34 IPC and sentenced them to undergo imprisonment for life holding that the deceased succumbed to the injuries caused by all the accused persons generally and by A-2 and A-3 in particular. All the other accused were acquitted of all other charges framed against them.

On appeal, the Division Bench of the High Court upheld the conviction and sentence of the appellants. In appeals to this Court it was contended on behalf of the appellants (1) that with the acquittal of co-accused of all the charges, the appellant's conviction also became vulnerable and since

the prosecution witnesses were disbelieved qua coaccused even with regard to the assault on deceased, they could not be relied upon to convict the appellants; (2) Though the deceased suffered multiple injuries but only one injury had proved fatal according to the medical opinion and since it was not certain that the blow given by either of the appellant was by itself fatal or who out of the two had caused the fatal blow or that the same was caused with the intention of causing death, the appellants' conviction under Section 302/34 IPC was not warranted; and (3) the nature of injuries indicated that the intention of the appellants was only to give beating to the deceased and they could be held guilty of an offence under Section 325/34 IPC only.

Allowing the Appeals, this Court,

HELD: 1. This Court, in an appeal by special leave, when the two courts below have concurred in their conclusions does not ordinarily

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reassess the evidence. The conclusion with regard to the assault on the deceased by the appellants as recorded by the learned Sessions Judge and confirmed by the learned Division Bench is based on proper appraisal of the evidence and is sound. [808-F, H, 809-A]

2. The Maxim falsus in uno falsus in omnibus cannot be mechanically applied and the mere fact that the evidence of some of the prosecution witnesses was found unsafe for convicting the co-accused, is by itself no ground for rejecting the whole body of their testimony. It only puts the court on its guard to carefully scrutinise their evidence. [809-C]

3. In cases, where large number of persons are involved and in the commotion injuries are caused to the prosecution witnesses and others, it becomes the duty of the court to determine the common intention which could be attributed to those accused who stand convicted, where some of their co-accused stand acquitted and the State chooses not to file any appeal against their acquittal. With a view to determine the common intention, the nature of injuries, the background of the incident and the nature of the weapons used to cause the injuries besides other factors are required to be properly considered and appreciated. [809-H, 810-A]

4. If common intention to cause death had been established in the case the prosecution would not have been required to prove which of the injuries was caused by which accused to sustain the conviction of the accused with the aid of Section 34 IPC, but in a case like this, where five of the co-accused stand acquitted and the common intention to cause death is not established beyond a reasonable doubt, the prosecution must establish the exact nature of the injuries caused to the deceased by the accused with a view to sustain the conviction of that accused for inflicting that particular injury. [812 G-H, 813-A]

5. It is the case of the prosecution that the injuries

were caused to the deceased not only by the appellants but by the other accused also, who stand acquitted. In the face of this evidence it cannot be postulated that the two appellants alone caused all the injuries to the deceased and that too with the common intention to cause his death. If the accused had the intention to cause death of the deceased, they would have probably come armed with mere formidable weapons. The seat of the injuries as also their nature fortifies this view because most of the injuries were on non-vital parts of the body. Therefore, it cannot be said that the appellants have had

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the intention of causing the death of the deceased or even causing such bodily injury as was likely to cause death. Therefore, neither of them can be convicted under Section 302/34 IPC. [811-D, 812-C-E, 813-B]

5.1 However, the offence of the appellants would squarely fall under Section 304 Part II IPC because they can be attributed with the knowledge that their act was likely to cause death or to cause such bodily injury as was likely to cause death, since a number of injuries had been caused and, the head injury was sufficient in the ordinary course of nature to cause death. Accordingly, they can only be held guilty of committing culpable homicide not amounting to murder. [813 C-D, 812 F]

6. Consequently, appellants' conviction is altered to one under Section 304 Part II. However, as each of the appellants had suffered imprisonment for more than five year as under-trial prisoners and during the trial and on conviction it is not now desirable to send them back to jail after they have been on bail for more than a decade and particularly when during that period nothing has been brought to the notice of the Court to show that they had indulged in any criminal activity. Therefore, their sentence is reduced to the period of imprisonment already undergone by them. [813 E, 813 G-H, 814-A]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 66-67 of 1978.

From the Judgment and Order dated 15.9.1976 of the Madras High Court in Criminal Appeal No. 209 of 1975.

N.T. Vanamamalai, R.K. Grag, V.J. Francis, A. Sasidharan and V. Subramaniam for the Appellants.

K.V. Venkataraman and K.V. Viswanathan for the Respondent.

The Judgement of the Court was delivered by DR. A.S.ANDND J. Trade union rivalry and fight for leadership, power and influence in the trade union, claimed the life of Prathab Chandran on 15th of June 1972 at the Simpson Plant Sembium. For the said murder of Prathab Chandran, Ex. Vice-President of the Peravai Workers' Union, seven accused were arrayed on seven charges and tried by the learned Sessions Judge, Madras Division who vide judgment dated 29th March 1975 acquitted all the accused of the charge of criminal conspiracy under Section 120 B read with Section 302 IPC. All the accused other than accused No.2 and accused No.3 (hereinafter referred to as A-2 and A-3) were acquitted of the other charges framed against them and conviction was recorded against A-2 and A-3 under Section 302 read with Section 34 IPC and each one of them was sentenced to suffer rigorous imprisonment for life. A-2 and A-3, namely, Nadodi Jayaraman [A-2] and Dilli Bai [A-3] filed an appeal against their conviction and sentence in the High Court of Madras. A Division Bench of that Court, vide judgment dated 15th September 1976, dismissed their appeal, thereby upholding their conviction and sentence. Both A-2 and A-3 preferred special leave petitions (Crl.) in this Court and on 1st February 1978, special leave was granted. Hence these appeals.

Before proceeding, further, it would be relevant to note that both the appellants, A-2 and A-3, along with five acquitted co-accused, A-1, A-4, A-5, A-6 and A-7, had been charged firstly, for criminal conspiracy to cause the murder of Prathab Chandran, punishable under Section 120 B read with Section 302 IPC and secondly, for the murder of Prathab Chandran, in furtherance of common intention to kill him punishable under Section 302 read with Section 34 IPC. A-1 was charged with abetment of murder, punishable under Section 302 read with Section 109 IPC; A-4 was charged for voluntarily causing hurt to PW-19 Munuswami, punishable under Section 320 IPC; A-2, A-3 and A-6 were charged for voluntarily causing hurt to PW-21, Gopalakrishnan, in furtherance of their common intention, punishable under Section 324 read with Section 34 IPC; A-5 and A-6 were charged for voluntarily causing hurt to PW-23, Gajendra Babu in furtherance of their common intention punishable under Section 324 read with Section 34 IPC, and A-6 was charged for voluntarily causing damage to the motor-cycle of Prathab Chandran deceased, punishable under Section 435 IPC. Except for recording the conviction of A-2 and A-3 for an offence under Section 302 read with Section 34 IPC, all other charges against the accused including A-2 and A-3 failed and since there has been no appeal against the acquittal of the co-accused of A-2 and A-3 or against A-2 and A-3 in respect of their acquittal for the other offences, we need not detain ourselves to reproduce the finding of the courts below in respect of various charges which had been framed against all the accused persons.

The case of the prosecution is that Simpson Group of Companies had nine factories at the relevant time. There was a labour union known as Simpson Companies Workers' Union and one Kattur Gopal was its President. Prathab Chandran deceased, an inspector working in Plant III, was one of its Vice- Presidents. This Union was attached to what is called the "D.M.K. Peravai". The deceased was one of the prime promoters of the said Peravai. Kuchelar A-1 was elected as the president and Nododi Jayaraman A-2 [one of the appellants herein] was elected the Vice-president of the Simpson Group of Companies Workers' and Staff Union. The election had taken place by secret ballot on 27.4.1972. Madhavan A-5 and Sailam A-4 had been elected as Assistant Secretary and Executive Committee Member of the Union respectively. Amuldoss alias Devadoss, A-6, and Devarajan, A-7,

were elected as group leaders. Kuchelar A-1, considered Prathab Chandran deceased as posing a serious threat to the power and influence, hitherto exercised by him in the Labour Union Movement. This rivalry between A-1 group and Prathab Chandran group in the trade union leadership, resulted in the occurrence on 15.6.1972, when Prathab Chandran was murdered.

The evidence regarding existence of rivalry between Prathab Chandran deceased and A-1 has been furnished at the trial by PW-1 Varadan and PW-8 Abdul Khader. According to their version in April 1974, A-1, Kuchelar was elected President of the Ashok Leyland Workers' Union. It was alleged that owing to the "go slow" policy advocated by A-1, the management of the Ashok Leyland closed the factory. A meeting of various trade unions was convened and in the all party meeting held on 29.5.1972, it is alleged that the deceased in the course of his speech in the meeting stated that A-1 should be removed from the Presidentship of the union as he creates a situation, whenever, he becomes President of any union necessitating the closure of the factory, to the detriment of the workers' interest. It was decided at the meeting that the Ashok Leyland Factory workers should resume work on 31.5.1972. Earlier an Association had been formed called Ashok Leyland Workers' Welfare Protection Front and the deceased Prathab Chandran was its promoter. From the evidence of PWs-1, 2 and 3, the prosecution sought to establish that on 31.5.1972, the group belonging to A-1 went to Ashok Leyland Factory in order to create galata in case the workers resumed work as per the directions given by Prathab Chandran deceased, at the all party meeting. On the intervention of PW-2, and untoward situation was avoided. On 9.6.1972, the executive Committee of the Ashok Leyland workers' Union passed a 'no-confidence' motion against A-1 and removed him from the Presidentship and instead elected PW-1 as the president of the Union. On 11.6.1972, when A-1 came to the Ashok Leyland Factory, he learnt that Prathab Chandran deceased was responsible for his removal from the Presidentship of Workers' Union and the election of PW-1 as its President. A-1, thereupon, told his supporters and others that Prathab Chandran deceased had been giving lot of trouble and that he should be finished. Prosecution has led evidence to show that there had been some incidents earlier also resulting in a show down between Prathab Chandran group and the A-1 group, including the incident of hoisting the flag by Prathab Chandran deceased at Nanthampakkam Surgical Instruments Factory on 19.5.1972. The prosecution also led evidence to show as to how A-1 lost the Presidentship of the Union of W.S. Insulators Employees and Prathab Chandran managed to wield influence with the labour and members of the union of the W.S. Insulators Employees when he formed a rival union called W.S. Insulator Workers' and Staff Union on 6.3.1972. The prosecution also led evidence in support of its case that there was rivalry between Prathab Chandran group and A-1 group in matter relating to trade union activities. The prosecution has established on the record, as was found by the learned Sessions Judge and the Division Bench of the High Court of Madras, that there was trade union rivalry between A-1 group and Prathab Chandran group and that A-1 nurtured grudge against Prathab Chandran deceased. It is also the prosecution case that on 14.6.1972, at the request of Prathab Chandran deceased, Raju PW-11, gave a draft notice Ex.P-3 to Ganeshan PW-12 for printing of the pamphlet relating to a meeting to be held under the auspices of the Welfare Committee at 11.00 a.m. on 18.6.1972 Raju PW-11 gave fifty copies of the notice to Balaraman PW-22 for distributing the same amongst the workers and took upon himself to distribute the rest of the pamphlets.

It is further the prosecution case that on the fateful day, 15.6.1972, Prathab Chandran deceased left his house for the factory at about 3.30p.m. on his motor-cycle bearing registration No.MDS-9200, belonging to his brother Ramachandran PW-18, who was then staying with him. Ravindran PW-13 accompanied the deceased and was riding on the pillion. At about 4.00 p.m. they reached Simpson Factory. Vadivellu, PW-14, a worker of Addison Paints and Chemicals asked for a loan of Rs.200 from the deceased, who promised to give it to him on getting the incentive money. The deceased signed an incentive slip, Ex.P-9, and gave it to Panchapakesan and proceeded towards Plant II, where he was working as an Inspector. The pamphlet relating to the meeting of 18.6.1972, had earlier been distributed by Balaraman PW-22.

Earlier at about 3.45 p.m. on 15.6.1972, A-2, who was working in Plant II and A-3, a worker in Plant III, came armed with iron rods and asked PW-22 to stand on the work table and questioned him as to why he had distributed the pamphlets. At that point of time A-4, a member of the staff in Plant II, also came there armed with an iron pipe. A-2 told A-4 that Prathab Chandran was bound to come there on hearing that PW-22 had been made to stand on that table and he called A-5 to A-7 to come there so that when Prathab Chandran comes he should be finished then and there, as per the "instructions" of Kuchelar A-1. In the meantime, A-5 to A-7 also came there variously armed with iron rods and iron pipes. Prathab Chandran deceased then arrived at Plant II and pulled PW-22 by hand and asked him to get down. A-2 then declared that they knew that Prathab Chandran would come there and that they were waiting for him when A-3 shouted that they had decided to finish him. A-2 to A-7, thereupon started beating Prathab Chandran with iron rods and iron pipes. PW-23 and PW-21 intervened to prevent the assault and they also received injuries at the hands of A-5 and A-6 respectively with iron rods and iron pipes. A-2, A-3 and A-6 gave beating to PW-21 also and at that point of time Prathab Chandran attempted to escape through the western entrance of Plant II towards Plant III. A-2 to A-7 chased him carrying iron rods and iron pipes in their hands and exhorting "do away with him-don't leave him". They obstructed Prathab Chandran at the entrance to Plant III when Munuswamy PW-19 pleaded with them not to beat Prathab Chandran. A-4, thereupon, gave a first blow on the nose of PW-19 while A-6 gave a blow with iron pipe on his back. Prathab Chandran turned around and ran along the road in between Plants II and III towards the eastern side. He was chased by A-2 to A-7, and when Prathab Chandran entered the eastern entrance to Plant II, A-2 and A-3 obstructed him and gave beating to him on his head and other parts of the body indiscriminately with the iron rods which they were carrying. A-4 and A-7 then shouted that the supporters of Prathab Chandran should also be caught. A-5, however, dropped the iron rod he had with him and left the place. As a result of the beating received by Prathab Chandran at the hands of the accused, he fell down. After Prathab Chandran had fallen down, he was put on a stretcher by PWs 26 and 27 and taken to the first aid room. At the first aid centre after rendering first aid to the injured the Medical Officer asked them to rush Prathab Chandran to the General Hospital. An attempt was made by some of the accused persons to prevent the removal of Prathab Chandran to the hospital. However, later on, A-5 came there and said that A-1, Kuchelar, had given permission for the removal of Prathab Chandran to the Hospital, where he was later on removed in a police van.

PW-38, the Industrial Relations Officer in Simpson Group of Companies received a phone call at about 4.30 p.m. on 15.6.1972 from a person disclosing his identity as Gajendra Babu who informed

him that there was some trouble in Plants II and III at Sembium and that Prathab Chandran had been beaten by Nadodi Jayaraman, Dilli Bai and three or four others. PW-38 was further told by the said Gajendra Babu to make arrangements for taking Prathab Chandran to the Hospital and it was the Industrial Relations Officer PW-38 who, thereupon, contacted the Police Control Room on phone and asked them to rush to the Sembium Simpson Group of Companies. Ramachandran, PW-41, Head Constable on duty in the Police Control Room received a message from PW-38 at 4.34 p.m. from telephone No.83773 to the effect that the workers in Plants II and III of Simpson Company at Sembium were engaged in rioting and immediate action might be taken. The message was recorded in the register and communication of the information was sent to the higher authorities and Police Control Room as well. PW-44 Assistant Commissioner (Law and Order) Western Range received the message from the Police Control Room at about 4.35. p.m. on 15.6.1972 and rushed to the main entrance of the Simpson Group of Companies, Sembium reaching there at about 4.45 p.m. He found that there was a crowd of workers comprising about 3000 workers shouting slogans and they prevented him from entering the Simpson Estate. At about 5.10 p.m., the Deputy Commissioner of Police, [Law & Order] North also came there with some additional force but the crowd still continued to be boisterous and violent. They pelted stones and brick- bats at the police. The Commissioner of Police himself arrived at 6.00 p.m. and warned the crowd that if they failed to give way , he would use force. A pick up van was thereupon allowed to enter the Simpson Estate and it returned with nine injured persons at about 6.30 p.m. Since, the mob continued to be violent, the Commissioner of Police ordered a mild lathi charge after the management had declared that the factory would remain closed on 15th and 16th of June 1972. Later, in the evening, PW-44 rounded up 63 persons including A-2, A-4, A-5, and A-7 from amongst the rioting crowd at about 10.00 p.m. and handed them over to Sub-Inspector of Police, [Law & Order], when he came there in connection with FIR in Crime No.919 of 1972. PW-44 gave a special report, EX-P.42, to Inspector Kothandapani of Crime Branch, Madras. PW-46 Inspector Dasaratha Raman of Crime Branch went to the ESI Hospital along with PW-42 and PW-40 and found PW- 23 and Gajendra Babu in Ward No.11. He recorded the statement of PW-23 and registered a case in Crime No.919 of 1972 relating to FIR Ex.P-45. He directed the arrest of the six accused persons mentioned in the statement. PW-45 to whom A-2 and A-5 were handed over by PW-42 took them to the Commissioner's Office at about 1.00 a.m. on the night intervening 15th and 16th of June 1972 and as they reached the Commissioner's Office in the van at about 2.00 a.m., A-2 and A-5 jumped from the van and ran towards the canteen inside the Commissioner's Office with a view to escape. They were chased and since they resisted their arrest, force was used and they were over-powered. They sustained certain injuries in that incident. PW-45 gave the special report Ex.P-43 for the said incident to the Inspector and a case was registered in Crime No.494 of 1972 under Section 224 IPC against A-2 and A-5. The injured A-2 and A-5 were taken to Kilpauk Medical College for treatment.

At about 7.30 p.m. on 15.6.1972, PW-33, the Casualty Medical Officer attached to the General Hospital examined Prathab Chandran and found him dead. He prepared an injury statement and sent the report, Ex.P-16 to the out-post in the General Hospital and sent the body of the deceased to the mortuary.

PW-37, Dr. C.B. Gopalakrishnan conducted post-mortem examination on the dead-body of Prathab Chandran at about 1.45 a.m. on 16.6.1972, and found the following injuries of the body of the

deceased:

1. Transverse laceration over front of right knee 3 X 1 cms.
2. Laceration 2 X 1 cms. oblique over front of middle of right leg.
3. Laceration 4 X 2 cms. bone deep just above front of right ankle.
4. Bruising outer aspect of lower portion of middle of right leg 3 X 2 X 1 cms.
5. Bruising of right ankle and foot outer aspect 6 X 3 X 1 cms.
6. Laceration of the left ankle near medial malleolus 3 X 2 X 1 cms.
7. Laceration inner aspect of left leg just above the ankle 3 X 2 X 1 cms.
cms.
9. Contusion middle of front of left leg 3 X 2 X 1 cms.
10. Laceration 4 X 2 cms. bone deep over front of left leg below left knee.
11. Laceration 3 X 2 cms. bone deep front of left knee.
12. Contusion middle of outer aspect of left forearm 2 X 1 X 1/2 cms.
13. Contusion 8 X 2 X 2 cms. middle of outer aspect of right arm.
14. Contusion 12 X 2 X 1 cms. middle of front of right arm.
15. Laceration 1-1/2 X 1 cms. muscle deep outer aspect of right elbow.
16. Bruising of lower portion of right arm out aspect 1-1/2 X 1 X 1 cms.
17. Bruising out aspect of middle of right forearm 5 X 3 X 2 cms.
18. Bruising outer aspect of front of right side of chest 3 X 2 X 1 cms.
19. 4 cms below injury No.18, bruising 2 X 1 X 1 cms.
20. Irregular laceration 3 X 2 cms. bone deep right side of face near right side of nose.
21. Laceration frontal region near the inner end of right eyebrow 2 X 1 cms. bone deep.

22. Laceration back of left side of frontal region 5 X

2 cms. bone deep fissured fracture 10 cms.

vertical of frontal bone extends into base with comminuted fracture of left orbital plate.

23. Laceration 4 X 1 cms. bone deep verticle right temporal region 2 cms. above right ear.

24. Laceration of right occipital region 3 X 1 cms. muscle deep.

25. Laceration of temporal region just above right ear 1 X 1/2 cms. muscle deep.

26. Laceration 3 X 2 cms. muscle deep back and middle of lower part of right thigh.

27. Bruising middle of back of right thigh 4 X 2 cms. muscle deep.

28. Bruising back of middle of left thigh 5 X 3 cms. muscle deep.

29. Bruising right side of abdomen lower part 3 X 1 cms. muscle deep.

30. Bruising right side of chest 5 X 4 cms. muscle deep

31. Bruising of right side of back extend into front of chest 10 X 4 cms. muscle deep.

32. Bruising top and back of right shoulder 5 X 2 cms. muscle deep . Edges of the lacerations were contused. Sub dural haemorrhage over the whole of left cerebral hemisphere and base of brain subarachnoid haemorrhage over left frontal region. Post Mortem Certificate, Ex.P-26 was issued by the Doctor who opined that the deceased had died due to shock and haemorrhage on account of multiple injuries and that injury No.22 was sufficient to cause death in the ordinary course of nature. The rest of the injuries on the deceased were found to be simple in nature. The Doctor further opined that subarachnoid haemorrhage over the left frontal region and subdural haemorrhage over the whole of the left cerebral hemisphere and the base of the brain were the corresponding internal injuries to external injury No.22. He went on to add that all the injuries could have been caused by blunt weapon and that death could have occurred at about 5.10 p.m. on 15.6.1972 and the injuries sustained at about 4.45 p.m. The Doctor also opined that the deceased could have survived for about an hour and might have become unconscious after the receipt of the head injury i.e. injury No.22. The Doctor went on to say that all the injuries on the deceased, without injury No.22, could not have by themselves caused his death and that all those injuries might have precipitated his death occasioned by injury No.22.

The story as unfolded by the prosecution at the trial, thus, goes to show that the occurrence on 15.6.1972 took place in three parts. The first part centres around the work table incident in Plant No.II when PW-22 was made to stand on the table and the deceased came there and was attacked by A-2 to A-7. PWs 21 and 23 had also received some beating during this part of the incident. The

second part, relates to the chase of Prathab Chandran by A-2 to A-7, as he ran out through the western entrance of Plant II towards Plant III and re-entered Plant II from the eastern side. The third part of the occurrence concerns the happenings inside Plant II at the eastern entrance where the deceased Prathab Chandran was assaulted as a result whereof he had fallen down. All the three parts of the occurrence were sought to be established by the prosecution by producing more than six eye witnesses. Some of the eye witnesses deposed only about the first part of the occurrence while the other eye witness deposed about the second and the third part. The learned Sessions Judge after an appraisal of the evidence relied upon the testimony of PWs 19, 21, 22, 25, 26 and 27 to hold that A-2 and A-3 had assaulted deceased Prathab Chandran on account of their rivalry and that Prathab Chandran succumbed to the injuries caused by all the accused persons generally and A-2 and A-3 in particular. The learned Sessions Judge, however, disbelieved the theory of conspiracy as alleged by the prosecution and also discredited the 'exhortations' allegedly uttered by A-1 on various occasions. He also disbelieved the utterances alleged to have been made by some of the accused during the first and second part of the occurrence and opined that various utterances had been attributed to the accused persons with a view to establish criminal conspiracy and that part of the prosecution evidence was only an embellishment. None of the accused were found guilty of the injuries alleged to have been caused by them to some of the prosecution witnesses. The testimony of the prosecution witnesses was, thus, not accepted in toto. Conviction was recorded only against A-2 and A-3 for an offence under Section 302/34 IPC.

The Division Bench of the High Court, after reappraisal of the evidence and hearing learned counsel for the parties at length, found themselves in 'complete agreement' with the learned Sessions Judge in disbelieving the charge of criminal conspiracy as put up by PWs 4, 7, 10, 20 and 30. The High Court did not agree with the submission made on behalf of the appellants that the acquittal of A-5 to A-7 of all the charges was sufficient reason for disbelieving the prosecution witnesses against A-2 and A-3 also. After analysing the evidence, the High Court found that though the learned Sessions Judge was not justified in accepting the plea of alibi as set up by A-5 but since no appeal had been filed against his acquittal, the finding of the Sessions Judge with regard to the acquittal of A-5 could not be interfered with. With regard to the participation of A-6 and A-7 in the assault, the High Court found, contrary to the findings of the Sessions Judge, that there was enough material on the record to establish the participation of A-6 and A-7 but again held that since no appeal had been preferred against their acquittal, therefore, it was unnecessary to deal with the question of their participation. The High Court noticed that the prosecution witnesses were partisan and therefore closely scrutinised the evidence of the eye witnesses with a view to determine the complicity of A-2 and A-3 in the murder of Prathab Chandran deceased. The Division Bench relied upon the testimony of PWs 19, 21, 22, 25, 26 and 27 and found:

"absolutely no hesitation in believing the evidence of these witnesses, though partisan in character, in as much as they have come forward with the true picture of the incidents that occurred in Simpson Groups, Sembium on the fateful day."

The High Court then went on to observe:

"Thus, the evidence let in by the prosecution and discussed above, clearly and clinchingly proves the complicity of the appellants in the crime. On the basis of the evidence of the eye-witnesses discussed in the foregoing paragraphs, it can be safely concluded that it was the appellants who, with iron rods, dealt blows on the head of Prathab Chandran at the entrance of Plant II, which, according to the prosecution is the third part of the occurrence."

and then after discussing the medical evidence confirmed the conviction and sentence imposed upon both the appellants.

M/s. N.T. Vanamamalai and R.K. Garg, the learned senior advocate, who have appeared for the appellants before us vehemently argued that since the main charge of conspiracy against all the accused had failed, the witnesses who had supported that charge could not be believed to sustain the conviction of A-2 and A-3. Learned counsel argued that A-2 and A-3 had been falsely implicated, since they were leaders of the rival Union and on the basis of material on record their implication with the aid of Section 34 IPC was in fact an attempt to finish the union and the partisan prosecution witnesses had a motive to falsely implicate them. Learned counsel emphasised that the absence of names in the FIR Ex.38 was indicative of the fact that scope had been left therein so as to implicate non-assailants also and A-2 and A-3, were falsely implicated on account of trade union rivalry. Great emphasis was laid by learned counsel for the appellants on the partisan character of the eye witnesses and it was urged that with the acquittal of A-1 and A-4 to A-7 of all the charges, the conviction of A-2 and A-3 had also become vulnerable and since the prosecution witnesses had been disbelieved qua A-1 and A-4 to A-7 even with regard to the assault on Prathab Chandran, they could not be relied upon to convict the appellants.

That Prathab Chandran died on account of the injuries received by him in the occurrence on 15th June 1972, is not in dispute. It also is not a matter of conjecture to say that the prosecution witnesses are partisan in character. As a matter of fact, both the learned Sessions Judge as well as the Division Bench of the High Court were conscious of the fact that the eye witnesses were partisan in character and it was for that reason that both the courts had scrutinised their evidence closely and in great details in order to satisfy themselves with regard to the truth or otherwise of their evidence in so far as the involvement of A-2 and A-3 is concerned. We are in agreement with the appraisal of evidence by the High Court. This Court, in an appeal by special leave, when the two courts below have concurred in their conclusions does not ordinarily reassess the evidence and we, therefore, had to decline the invitation of the learned counsel for the appellants to reappraise the entire evidence the third time. We, however, with a view to satisfy ourselves about the nature of the offence, in the facts and circumstances of the case, scrutinised those parts of the deposition of the prosecution witnesses which dealt with the assault on Prathab Chandran deceased. After going through the relevant evidence and hearing learned counsel for the parties, we are of the view that the conclusion, with regard to the assault on the deceased by A-2 and A-3, as recorded by the learned Sessions Judge and confirmed by the learned Division Bench is based on proper appraisal of the evidence and is sound. The High Court took pains and made conscientious efforts to scrutinise the evidence relating to the complicity of A-2 and A-3 and rightly rejected the argument that since some of the co-accused had been acquitted, against whose acquittal no appeal had been preferred by the State,

the evidence of the prosecution witnesses so disbelieved could not be relied upon to sustain the conviction of A-2 and A-3 either. This Court has time out of number pointed out that the Maxim falsus in uno falsus in omnibus cannot be mechanically applied and the mere fact that the evidence of some of the prosecution witnesses was found unsafe for convicting the co-accused, is by itself no ground for rejecting the whole body of their testimony. It only puts the court on its guard to carefully scrutinise their evidence. As already notice, we are satisfied with the appraisal of evidence by the courts below and find no reason to doubt the involvement of A-2 and A-3 is so far as the assault on Prathab Chandran deceased is concerned.

Faced with this situation, learned counsel for the appellants argued that the conviction of both the appellants for an offence under Section 302/34 IPC was in the facts and circumstances of the case not sustainable. It was submitted that it could not be said with any amount of certainty that the blow given by A-2 or A-3 was by itself fatal or who out of the two caused the fatal blow as that the same was caused with the intention of causing death. It was submitted that though the deceased had suffered as may as 32 injuries, it was only one injury which had proved fatal according to the medical opinion and therefore the appellants could not be attributed with the intention of causing such bodily injury either which could cause the death and therefore their conviction for an offence under Section 302/34 IPC was not warranted. Learned counsel emphasised that the nature of injuries, taken as a whole could only clothe A-2 and A-3 with the intention to give beating to the deceased and not with any intention to kill him and they could be held guilty for an offence under Section 325/34 IPC only.

In cases, where large number of persons are involved and in the commotion injuries are caused to the prosecution witnesses and others, it becomes the duty of the court to determine the common intention which could be attributed to those accused who stand convicted, where some of their co-accused stand acquitted and the State chooses not to file any appeal against their acquittal. With a view to determine the common intention, the nature of injuries, the background of the incident and the nature of the weapons used to cause the injuries besides other factors are required to be properly considered and appreciated.

The manner in which the occurrence in three parts took place has been adverted to by the prosecution witnesses. They have deposed about the assault on the deceased in the different parts of the occurrence and the role played by A-2 and A-3. According to Gopal Krishnan, PW-21 in the first part of the occurrence, "all the six of them [accused] beat Prathab Chandran alternatively". He then narrated about the chase given to Prathab Chandran by all the six accused and stated that at Plant III, A-2 and A-3 gave injuries to the deceased. To the similar effect is the statement of PW- 22 Balaraman, who stated that "these six persons [A-2 to A- 7] beat Prathab Chandran by iron rods and iron pipes and the beating fell on him". He also deposed that at the entrance of gate to Plant No.III, A-2 and A-3 caused injuries to the deceased. K. Krishnan, PW-24, deposed that when Prathab Chandran had been assaulted by all the accused and ran towards Plant III, he was chased by all of them carrying iron rods and pipes in their hands. Subramaniam, PW-25, also deposed to the same effect as PW-21. Ganpatilingam, PW-26, apart from stating that all the six persons A-2 to A-7 gave beating to the deceased Prathab Chandran and that A-2 and A- 3 gave him beating alternatively, when he entered Plant II also deposed that A-2 and A-3 had even threatened those who were trying

to carrying the deceased on a stretcher to the Hospital, which part of the story was rightly not believed by the courts below. Raman, PW-27, deposed that "the above said six persons beat Prathab Chandran repeatedly with rods and pipes." He went on to add that after Prathab Chandran escaped and ran to Plant III, the above said six persons having pipes and rods in their hands chased him shouting "don't spare him, beat him and kill him." This witness, however, gave a lie to the statement of the earlier witnesses when he deposed that when he was carrying the stretcher, he was not obstructed by accused A-2 and A-3. PW- 38 R. Vishwanathan, who was the Industrial Relations Officer of the Simpson Group of Companies at the relevant time and was the person who telephoned the Police and set the investigating agency into motion, while deposing as to how he was informed on telephone about the occurrence stated that Gajendra Babu had telephoned to him and said:

"Nadodi Jayaraman, Delli Bai and three or four workers beat Prathab Chandran. When I tried to prevent I was also beaten. Inform police and make arrangements to take Prathab Chandran to hospital."

Gajendra Babu, who telephoned to PW-38, had appeared as a witness during the inquest proceedings and his statement was recorded, which forms a part of the Inquest Report, Ex.P-46. He had stated that the six accused had joined together and given beating to Prathab Chandran and that those who tried to prevent assault on the deceased were also beaten. Referring to the third part of the occurrence, he stated that "again these six people, pushed Prathab Chandran with iron rods, shouting don't leave him, kill him."

From the evidence as noticed above, it emerges that according to the prosecution case itself the injuries were caused to the deceased Prathab Chandran not only by A-2 and A-3 but by the other accused also, who stand acquitted. In the face of this evidence it cannot be postulated that the two appellants alone caused all the injuries to the deceased and that too with the common intention to cause his death. A critical analysis of the injuries received by the deceased, which have been extracted elsewhere in the judgment, goes to show that the deceased had suffered 15 lacerations, 12 bruises and five contusions. Injuries 1 to 11 had been caused on his legs, knees, ankle etc., while injuries 26 to 29 were on the thigh and lower part of the abdomen. Injuries 12 to 17 and 32 had been caused on the forearm, elbow and the possibility of those injuries having been received by the deceased while trying to ward off the blows on the vital parts of his body cannot be ruled out. The remaining injuries were two bruises on the front and on the right side of the chest and two lacerations of 2X1 cms. near the right side of the nose and the inner end of the right eyebrow. There were two lacerations on the right temporal region and one on the right occipital region. It was only injury No.22 viz. "laceration on the back of the left side of the frontal region, 5X2 cms. deep, fissured fracture 10 cms. vertical of frontal bone, extending to base with comminuted fracture of the left orbital plate", which was found to be sufficient to cause death in the ordinary course of nature. According to the medical witness all the injuries, except injury no.22, were simple in nature and could not have by themselves caused death but those injuries could have precipitated the death.

Since, the evidence of the prosecution unmistakably asserts that injuries had been caused to the deceased by all the six accused and some injuries had been caused exclusively by A-2 and A-3 alternatively, during the third part of the occurrence, it cannot be said with certainty that the

intention of the accused was to cause death of Prathab Chandran deceased. This is more so because according to the medical evidence the deceased had died "due to shock and haemorrhage on account of multiple injuries", and according to the prosecution version all the seven accused had caused the injuries and not only A-2 and A-3. The accused party was armed according to the prosecution evidence, with iron rods and pipes and not with any other lethal weapon. If the accused had the intention to cause death of the deceased, they would have probably come armed with more formidable weapons. Again, looking to the nature of injuries, which except for injury No.22, were only simple and no other grievous injury was even caused, it appears to us that the accused possibly wanted to chastise the deceased for his trade union activities. The seat of the injuries as also their nature fortifies our view. According to the prosecution case itself, after Prathab Chandran had fallen down in the third part of the incident, none of the accused took advantage and caused any other injury to him. Most of the injuries, as already noticed, were on non-vital parts of the body. From the evidence and circumstances of the case, the appellants do not appear to have had the intention causing the death of the deceased or even causing such bodily injury as was likely to cause death. They can at the best be attributed with the knowledge that their act was likely to cause death or to cause such bodily injury as was likely to cause death, since a number of injuries had been caused and injury No.22 was sufficient in the ordinary course of nature to cause death. It is not as if A-2 and A-3 alone were armed with iron rods and pipes, with which the injuries were caused and their acquitted co-accused were unarmed. The acquitted co-accused, according to the prosecution evidence, were also armed with iron rods and pipes and as such it would be hazardous to guess as to which blow was caused by which accused. If common intention to cause death had been established in the case, prosecution would not have been required to prove which of the injuries was caused by which accused to sustain the conviction of the accused with the aid of Section 34 IPC, but in a case like this, where five of the co-accused stand acquitted and the common intention to cause death is not established beyond a reasonable doubt, the prosecution must establish the exact nature of the injuries caused to the deceased by the accused with a view to sustain the conviction of that accused for inflicting that particular injury. The evidence on the record does not lead to the conclusion that A-2 and A-3 alone caused all the injuries to the deceased with the intention to cause his death. The broad circumstances of the case impel us to hold that the common intention of A-2 and A-3 was not to cause the death of the victim and therefore neither of them can be held guilty of the offence under Section 302/34 IPC. Since, the deceased did succumb to the injuries, caused collectively, the appellants can only be held guilty of committing culpable homicide not amounting to murder. The act can be said to have been committed by the accused with the knowledge that it was likely to cause death or to cause such bodily injury as was likely to cause death of Prathab Chandran. Learned counsel for the appellants have not been able to persuade us to subscribe to the view that A-2 and A-3 can only be clothed with the intention of causing grievous hurt, punishable under Section 325/34 IPC. The offence of the appellants would, in our opinion, squarely fall under Section 304 Part II IPC. Thus, setting aside the conviction of the appellants for an offence under Section 302/34 IPC, we alter their conviction and hold them both guilty of the offence under Section 304 Part II IPC.

Coming now to the question of sentence. The occurrence took place almost two decades ago, on 15th June 1972. The appellants faced the trial and were convicted by the learned Sessions Judge Vide Judgment dated 29th March 1975 and thereafter their appeal against conviction and sentence remained pending and was dismissed by the High Court on 15th September 1976. Special leave was

granted on 1st February 1978, and on 28th November 1978, the appellants were directed to be released on bail vide this Court's order made in Criminal Misc. Petition No.2495 of 1978. On behalf of the appellants, we were informed that as under-trial prisoners and during the trial and on conviction, each of the appellants had suffered imprisonment for more than five years. In our opinion, therefore, it is not now desirable to send the appellants back to jail after they have been on bail also for more than a decade and during this period, nothing has been brought to our notice to show that they had indulged in any criminal activity. Therefore, while convicting them for the offence under Section 304 Part II IPC, we sentence each of the appellants to suffer rigorous imprisonment for the period already undergone by them.

To the limited extent noticed above, both the appeals shall stand allowed. The appellants need not surrender to the bail bonds which shall stand discharged.

T.N.A.

Appeals allowed.