Nallabothu Venkaiah vs State Of Andhra Pradesh on 20 August, 2002

Equivalent citations: (2002) 4 SCJ 1, AIR 2002 SUPREME COURT 2945, 2002 (7) SCC 117, 2002 AIR SCW 3442, 2002 (3) LRI 732, 2002 (6) SCALE 26, 2002 SCC(CRI) 1615, 2002 (4) SLT 811, 2002 (8) SRJ 327, (2002) 6 JT 213 (SC), (2003) SC CR R 740, (2002) 3 EASTCRIC 212, (2003) 2 MADLW(CRI) 688, (2002) 4 RECCRIR 373, (2002) 3 CURCRIR 211, (2002) 5 SUPREME 484, (2002) 3 ALLCRIR 2742, (2002) 6 SCALE 26, (2002) 2 UC 644, (2002) 45 ALLCRIC 661, (2002) 3 CHANDCRIC 84, (2002) 4 ALLCRILR 208, (2002) 3 CRIMES 221, 2002 (2) ANDHLT(CRI) 305 SC, 2002 (2) ALD(CRL) 441

Author: H K Sema

Bench: H K Sema

CASE NO.:
Appeal (crl.) 517 of 2000

PETITIONER:
NALLABOTHU VENKAIAH

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT: 20/08/2002

BENCH:
Y K SABHARWAL & H K SEMA.

JUDGMENT:

SEMA, J The appellant along with 15 other accused was put to trial before III Additional Sessions Judge, Guntur in Sessions Case No. 18 of 1994 to answer the following charges:

> "Charge No. 1: - That you A1 to A16 at about 5.30 p.m. on 13th day of October, 1992 on the highway between Sattenapalli and Macherla in between 38/2 and 38/4 K.M. Stone after crossing Pakalapadu major canal, formed into one group and were

members of unlawful assembly and did in prosecution of the common object of such assembly viz., of killing the deceased person R. Venkateswarlu son of China Bapaiah, 35 years, V.A.O. of Tondapi village, and rioting and at that time you were armed with deadly weapons like country made bombs, axes, spears and knives which are dangerous in nature and thereby committed an offence punishable under section 148 of the Indian Penal Code and within my cognizance;

Charge No. 2: - That you A-1 to A-16 at about the same time, date and place and in the course of same transaction as mentioned above; charged the deceased R.Venkateswarlu son of China Bapaiah, 35 years, V.A.O. of Tondapi village while he was coming on the motor cycle and when he reached the spot, all of you emerged from the bushes on either side of the road and that A10, A12, A8 and A16 hurled bombs and when the deceased fell down all of you surrounded him and that A-1, A-9 and A-10 of you axed on his head and that A-1 and A-2 of you cut the throat of the deceased with axe and long knife and that A-4, A-6 and A-7 of you stabbed him with spears on abdomen and lower portion and that A-5 stabbed him with spear on abdomen and that A-3 axed him near right ear, A-8 stabbed with spear on his neck; A-10 axed on the fore-head of him, A-11, A-12 and A-13 with spears and A-14 and A-16 with axes attacked the deceased indiscriminately and A-15 with knife stabbed on his neck resulting in his death instantaneously and thereby committed an offence punishable under section 302 read with 149 of the Indian Penal Code and within my cognizance;

Charge No. 3: - That you A-8, A-10, A-12 and A-16 of you at about the same time, date and place and in the course of same transaction as mentioned above; hurled countrymade bombs at the deceased R. Venkateswarlu in order to kill him while in possession of the Explosive Substances which are dangerous in nature which bombs exploded and thereby committed an offence punishable under sections 3 and 5 of Explosive Substances Act and within my cognizance."

The substance of the above charges is that on 13th October, 1992 at about 5.30 p.m. accused 1-16 formed themselves into an unlawful assembly and caused the death of one R. Venkateswarlu by hurling bombs and causing bodily injuries by axes, knives and spears. During the trial accused No. 2 expired and the trial against him stood abated. After concluding of the trial, the trial judge found that accused Nos. 1, 3, 4, 5, 7, 8 and 10 were guilty of the offence punishable under Section 302 read with Section 149 I.P.C. They were convicted and sentenced to suffer imprisonment for life and also to pay a fine of Rs. 500/- and in default to suffer simple imprisonment for 3 months. They were further sentenced to undergo Rigorous Imprisonment for one year each for the offence under Section 148 I.P.C. Both the sentences were ordered to run concurrently. The trial judge, however, found that accused Nos. 8, 10, 12 and 16 were not guilty of the offence under Sections 3 and 5 of the Explosive Substances Act and they were, accordingly, acquitted under the said charge. Rest of the accused, i.e. accused Nos. 6, 9 and 11 to 16 were not found guilty of the offences, for which they were charged. Being aggrieved, accused Nos. 1, 3 and 4 preferred Criminal Appeal No. 555 of 1998 and accused Nos. 5, 7, 8 and 10 preferred Criminal Appeal No. 556 of 1998 in the High Court.

The High Court, by the impugned order dated 31st January, 2000, reappreciated the evidence and acquitted accused Nos. 3 and 4 in Crl. A. No. 555 of 1998 and their appeal was allowed to that extent. The High Court also allowed Criminal Appeal No. 556 of 1998 and acquitted accused Nos. 5, 7, 8 and 10 and their conviction and sentence under the aforesaid sections of law was set aside. The High Court, however, confirmed the conviction and sentence of accused No. 1, (in Crl.Appeal No.555 of 1998) under Section 302 I.P.C. (simpliciter). The present appeal has been preferred by accused No. 1 (Nallabothu Venkaiah), the appellant before us. No acquittal appeals have been preferred by the State.

Before we advert to the points urged we may, at this stage, point out that the High Court has acquitted accused Nos. 3, 4, 5, 7, 8 and 10 on the ground that P.Ws. 1-3, who were the eye-witnesses to the occurrence were inimically disposed to the accused persons and their evidence was unreliable. The High Court also disbelieved the evidence of P.W.1 as he falsely deposed that his scooter bear the registration No.APG 2253. While acquitting the aforesaid accused, the High Court discarded the evidence of P.Ws. 1, 2 and 3 eye- witnesses by rendering the following reasons:

> "The investigation further discloses that the vehicle bearing registration number APG 2253 is a tractor, which was owned by the Commissioner of Guntur Municipality and under these circumstances, we hold that whatever evidence is given by P.W.1 is not in fairness. He went to make involvement as many accused as he can do. The evidence of P.W.1 discloses that there has been party faction in the village. He has been accused in number of cases, which were filed by the deceased and his party. To this effect a clear admission is given by him in the cross-examination. Therefore, we are not prepared to believe the evidence of P.W.1 as a whole.
>
> P.W.2 is a pillion seat driver. He has stated in his evidence, what all stated by P.W.1 but while making individual involvement P.W.2 has stated accused Nos. 1, 10 and 9 hacked the deceased on his head with an axe. It means P.W.2 did not involve accused Nos. 2 and 3 in the incident. They came for the first time and hacked the deceased but A1 appears to be common when the deceased was attacked.
>
> P.W.3 also claimed to be an eye-witness to the incident. He has come with a different story altogether. P.W.3 was a pillion seat driver of the motor cycle of the deceased. He stated in his evidence when he had seen the accused hurling bombs at him he requested the deceased to slow down the scooter. Then he jumped from the motor cycle and went towards bushes. He further stated that the deceased went to some distance and fell down. Then A1 hacked the deceased on his neck with an axe and thereafter, he made involvement of A2, A10, A5, A7, A6, A3, A8 and A15.
>
> This witness is also an accused in a number of cases along with P.Ws. 1 and 2. Therefore, it is very much clear from the evidence of P.Ws. 1, 2 and 3 that there has been a party faction and cases after cases were filed against each other.

> Considering the evidence of important eye witnesses, we are convinced that A1 was definitely present at the scene of offence and the presence of the other accused is doubtful because of inconsistency in the evidence of P.Ws. 1 to 3. Therefore, we are of the considered view that the other accused may be entitled for the benefit of doubt."

The contention that the eye-witnesses P.Ws. 1, 2 and 3 were inimically disposed to the accused has been rejected by the Trial Court by assigning cogent reasons and considering the medical and other corroborative evidence. The trial judge critically discussed the evidence of eye-witnesses, namely, P.Ws. 1, 2 and 3 and also analytical description of the part played by each of the accused in causing murderous assault on the deceased and accepted the eye- witnesses account as natural and reliable. P.W.1 stated in his evidence that on the fateful day, he went to Sattenapalli to purchase pesticides. After purchasing pesticides, he came to the centre, where P.W.2 was also standing and both of them started on his scooter to go to the village. When both of them were going on the scooter, they saw the deceased and P.W.3 Muppalla Ramaiah at a medical shop. When they were proceeding, P.W.3 and the deceased also followed them. He stated that after passing Pakalapadu Major canal, they suddenly heard the sounds of explosion of bombs. Then P.W.2, pillion rider on the scooter of P.W.1, informed him that the bombs had been hurled against the deceased and asked him to stop the scooter. Then he stopped the scooter and saw P.W.3 Muppalla Ramaiah jumping from the motor cycle of the deceased and running towards northern side fields. P.W.3 was the pillion rider on the motor cycle of the deceased. He further stated that at that time, the deceased - Rayidi Venkateswarlu was driving the motor cycle slowly. Then accused Nos. 8, 10, 12 and 16 hurled bombs. Accused Nos. 1 to 3 came opposite from southern side armed with axes and hacked on the head of the deceased. Then the deceased fell down. Accused No. 1 hacked the deceased on his neck. A.10 hacked on the head of the deceased with an axe. A.2 hacked on the neck of the deceased with a knife. A.4 to A.7 stabbed the deceased on his stomach with spears. P.W.1 further stated that A.1 and A.10 chased them and then they ran towards the scooter and the accused ran away towards south. P.W.1 also stated categorically that at that time, he had a scooter bearing No. A.P.G. 2253, which he took from one Narasimharao, but he did not get it registered in his name. He admitted that himself, deceased and P.Ws. 2 and 4 were figuring as accused for assault of a woman and A.1 is one of the witnesses in that case. He also admitted that himself and PWs. 2 to 4 are shown as accused in the murder case of Rachakonda Chandraiah. It, therefore, clearly indicates party factions in the village.

P.W.2 stated in his evidence that on the day of the incident, he went to Sattenapalli to purchase a washer of his motor and in his return, he met P.W.1 and both of them started on the scooter of P.W.1 to go to the village. He further stated that when they reached Five Lamps Centre, they found deceased and P.W.3 purchasing medicines and when they crossed Major canal, they heard explosion of bombs and saw P.W.3 jumping from the motor cycle of the deceased. He also stated that accused Nos. 8, 10, 12 and 16 hurled bombs. He further stated that the deceased was proceeding on his motor cycle by escaping the bombs. He categorically stated that accused Nos. 1, 9 and 10 hacked on the head of the deceased with axes. A.2 hacked on the neck of the deceased with an axe. A.10 hacked on the fore-head of the deceased with an axe. A.2 stabbed on the neck of the deceased with a knife. A.4, A.5 and A.7 stabbed the deceased with spears on his stomach. P.W.2 also stated that A.1 and A.10 chased them for a distance. P.W.2 also admitted about the cases pending against him along with other witnesses.

P.W.3, who accompanied the deceased on a motor cycle also deposed about the specific overt acts played by each and every accused. He repeated the stories narrated by P.Ws. 1 and 2, as we have referred, earlier. He gave a graphic description of each and every overt act of the accused in causing murderous assault on the deceased. He was a pillion rider of the deceased motor-cycle. Immediately after the bomb was hurled, he ran towards the bush and watched the entire incident from there. The witnesses and the accused are all from the same village.

Dr. G. Vijaya Saradhi, Civil Assistant Surgeon, Government Hospital, Sattenapalli, P.W.9, conducted Post Mortem Examination of the deceased and found the following injuries:

> "1. An incised wound with clean cut edges and tapering both ends of 6 x 0.5 cms. x bone deep over the back of the right side of the occiput.
>
> 2. An incised wound of 5 x 0.5 cms. x bone deep over right occipital region. Anterior to injury No. 1. Edges are well defined and contused.
>
> 3. An incised wound 7 x 0.5 cms. x bone deep over right parietal area extending to right temporal with tapered edges well defined and clean cut.
>
> 4. A cut laceration 3 x 0.5 cms. of right ear pinna rediating to neck.
>
> 5. An incised wound 4 x 1.5 cms. x bone deep over the middle of fore-head edges inverted and contused.
>
> 6. A cut incised 5 x 1.5 cms. x bone deep above the left-eye- brow, the edges dragged and contused.
>
> 7. A cut incised wound (chopped) of 3 x 1.5 cms. irregular and bone deep fractured the mandible over right side crushing the structures underneath the root of the tongue with distortion of the face.
>
> 8. A cut laceration 2.5 x 0.5 cms. below the left ear with left side of the mouth.
>
> 9. A cut incision 5 x 2 cms. x muscle deep, the irregular and inverted edges transversely present over the front of the neck below the thyroid cartilage cutting the underneath neck structures, fractured the Hyoid cut the trachea, larynx and oesophagus.
>
> 10. A cut incised wound 5 x 2 cms. x muscle deep with ragged edges just below the injury No. 9 cutting all the neck structures underneath the injury.
>
> 11. A punctured wound, vertical, clean edges inverted of 2 x 1 cms. x cavity deep over the left side of the neck.

12. A cut laceration transversely present of 2 1/2 x 1 cm x cavity deep over the medial end of left collar bone.

13. A stab injury 2.5 x 1 cm. x cavity deep over shaped over the left laoin area anteriorely.

14. A laceration 15 x 5 cms. with charred edges and nail over the lateral aspect of left side of the thorax.

15. A stab injury 3 x 0.5 cms. with inverted and ragged edges of cavity deep over the left side of the spigastrium with stomach area.

16. A stab wound 4 x 0.5 cms x cavity deep with intestines. Seen out side above the umblicus transversely present.

17. A stab wound 3 x 0.5 cms. x cavity deep with clean and inverted edges over the right side of the umbilcus. Obliquely present.

18. Multiple abrasion with charred edges over the lateral aspect of left upper arm. Fore arm of about 0.25 to 1.5 cms. x 0.25 x 1 cms.

19. Multiple abrasions red with charred edges over the lateral aspecty of left thigh of 0.2 to 10 cms.

20. Multiple abrasions 0.5 x 1 cm x 0.2 to 1 cm. Over the lateral aspect of left side of the abdomen.

21. A cut laceration 2 x 0.5 cms x 1 cm. over the right hand at the root of the thumb."

The contention of the counsel for the accused that evidence of P.Ws. 1 to 3 (eye-witnesses) cannot be accepted as they are chance witnesses and highly interested and P.Ws. 1 and 2 are also related to the deceased and that they are inimically disposed to the accused has been rejected by the Trial Court by assigning cogent reasons. The Trial Court has accepted the evidence of P.Ws. 1 to 3 as natural, reliable and truthful. After scanning their deposition with care and caution, the trial judge has held that admittedly all the accused and the prosecution witnesses are from the same village and there is a faction in the village between the parties for the reasons that the deceased Rayidi Venkateswarlu, who was President of the village, was selected as Sarpanch and later on 26.2.1992, he resigned from the Presidentship. Then, A.1, who was the Vice-President, assumed charge as President of the Village and since the deceased was popular in the village and became the Village Administrative Officer, the appellant was facing difficulties in getting quorum in the village. P.Ws. 1, 2 and 3 also admitted that there were criminal cases involving both the parties. In such a situation, the trial judge held that it will be difficult to get unbiased and independent witnesses and, therefore, the eye-witness account of P.Ws. 1 to 3 cannot be thrown out on account of they being interested witnesses, if otherwise there is no infirmity in the depositions of P.Ws. 1 to 3 and their statements

are reliable and creditworthy. We accept the view taken by the Trial Court as correct appreciation of the evidence of PWs 1 to 3, in the facts and circumstances of the case.

The contention of the counsel for the accused that the evidence of P.W.1 cannot be accepted as he gave false evidence with regard to the registration number of his scooter has also been rejected by the Trial Court. In his statement, P.W.-1 stated that he had a scooter and it bears the registration No. A.P.G. 2253. It is the contention of the counsel that the registration No. cited by the P.W.1 belongs to a tractor and not to a scooter and therefore, the statement of P.W.1 that he is owning a scooter bearing registration No. A.P.G. 2253 is false and his evidence is not reliable. The High Court has erroneously accepted this submission. The factum of P.W.1 driving a scooter on that day has been proved by P.Ws. 2 and 3. It is immaterial which registration number the scooter bears. In his cross-examination, P.W.-1 stated that he took the scooter from Narasimharao and he did not get it registered in his name. He also denied the suggestion that he had no scooter. The incident had happened on 13.10.92 and the witness was examined on 17.11.97 after a gap of almost five years. It must be remembered that human memories are apt to blur with the passage of time, more so, when P.W.2 stated that the scooter was not registered in his name at that time.

We have already quoted the reasoning rendered by the High Court acquitting accused Nos. 3, 4, 5, 7, 8 and 10. The aforesaid finding has been rendered by the High Court without discussing the depositions of P.Ws. 1 to 3 and by a cryptic order. The witnesses are inimically disposed to the accused alone would be no ground to throw away their otherwise reliable, natural and credit worthy statement. The test, in such circumstances, as correctly adopted by the Trial Court, is that if the witnesses are interested, the same must be scrutinized with due care and caution in the light of the medical evidence and other surrounding circumstances. Animosity is double edged sword and it can cut both sides. It can be a ground for false implication. It can also be a ground for assault. We are constrained to deprecate the manner in which the High Court threw away the eye-witness accounts of P.Ws. 1 to 3 on ground of animosity albeit without any discussion.

The Trial Court found from the deposition of PWs that the village Tondapi is a faction ridden village where criminal cases are instituted involving both the prosecution and accused parties and it is difficult to secure unbiased and independent witnesses and after thorough scrutiny accepted the evidence of P.Ws 1-3 as truthful and reliable. It must be borne in mind that criminal justice system must be alive to the expectation of the people. The principle that no innocent man should be punished is equally applicable that no guilty man should be allowed to go unpunished. Wrong acquittal of the accused will send a wrong signal to the society. Wrong acquittal has its chain reactions, the law breakers would continue to break the law with impunity, people then would lose confidence in criminal justice system and would tend to settle their score on the street by exercising muscle power and if such situation is allowed to happen, woe would be the Rule of Law. What is apparent from the aforesaid discussion is that the acquittal of the accused recorded by the High Court was clearly contrary to the evidence on record and on the basis of mis-appreciation of eye witnesses account. It is unfortunate that acquittal appeals are not before us.

Two questions of law are raised before us. Firstly, whether the appellant could be convicted under Section 302 I.P.C. (simpliciter) without aid of Section 149 I.P.C. in the absence of substantive charge

under Section 302 I.P.C.? Secondly, whether the appellant could be convicted under self same evidence on the basis of which other accused are acquitted? Mr. A. Subba Rao, learned counsel appearing for the appellant submits that since no separate substantive charge has been framed against the appellant under Section 302 I.P.C., the conviction of the appellant is bad. This question has been decided in a catena of decisions of this Court. In Subran and Ors. v. State of Kerala (1993) 3 SCC 722 (deciding review petition No. 1394 of 1993) six accused were arraigned for offences punishable under Sections 302, 324, 323, 341, 148 read with Section 149 I.P.C. Accused No. 1 Subran alone was convicted under section 302 IPC(simpliciter) by the Trial Court and confirmed by the High Court on appeal. The three-Judge Bench of this Court reviewing its earlier judgment substituted paragraphs 10 and 11 of the previous judgment as under:

> "Appellant 1, Subran, had rightly not been charged for the substantive offence of murder under Section 302 IPC. Subran, appellant 1, was not attributed the fatal injury or identified as the person who caused the fatal blow. According to the medical evidence, none of the injuries allegedly caused by appellant- Subran either individually or taken collectively with the other injuries caused by him, were sufficient in the ordinary course of nature to cause death of Suku. There is no material on the record to show that the injuries inflicted by Subran, with the chopper, were inflicted with the intention to cause death of Suku. Under these circumstances, the conviction of the first appellant, Subran, for an offence under Section 302 IPC simpliciter was neither desirable nor appropriate. The High Court, it appears, failed to consider the scope of clause (3) of Section 300 IPC in its proper perspective. In the facts of the present case, the intention to cause murder of Suku, deceased could not be attributed to the said appellant as the medical evidence also unmistakably shows that the injuries attributed to him were not sufficient in the ordinary course of nature to cause death of the deceased. Appellant 1 Subran, therefore, could not have been convicted for the substantive offence under Section 302 IPC and his conviction for the said offence cannot be sustained. That Suku died as a result of cumulative effect of all the injuries inflicted on him by all the four appellants stands established on the record. The question, therefore, arises what offence did the four appellants commit?"

In Atmaram Zingaraji v. State of Maharashtra (1997) 7 SCC 41 nine persons were arraigned as accused before the trial court under Section 149/302/326 IPC. No other person, named or unnamed, alleged to have participated in the crime. All the other 8 accused were acquitted by the High Court. However, the appellant was convicted under Section 302 IPC with the aid of Section 149. On appeal, this Court held:

> "In either of the above situations therefore the sole convict can be convicted under section 302 IPC (simpliciter) only on proof of the fact that his individual act caused the death of the victim. To put it differently, he would be liable for his own act only. In the instant case, the evidence on record does not prove that the injuries inflicted by the appellant alone caused the death; on the contrary the evidence of the eyewitnesses and the evidence of the doctor who held the post-mortem examination indicate that the deceased sustained injuries by other weapons also and his death was

> the outcome of all the injuries. The appellant, therefore, would be guilty of the offence under Section 326 IPC as he caused a grievous injury to the deceased with the aid of a jambia (a sharp-cutting instrument)."

In Krishna Govind Patil v. State of Maharashtra 1964 (1) SCR 678 a four-Judge Bench of this Court has laid down that when four persons are tried on a specific accusation that only they committed a murder in furtherance of their common intention and three of them are acquitted, the fourth accused cannot be convicted with the aid of Section 34 IPC for the effect of law would be that those who were with him did not conjointly act with the fourth accused in committing the murder.

In Nethala Pothuraju and Ors. v. State of Andhra Pradesh (1992) 1 SCC 49 the appellant was called upon to face the trial along with other six accused for offences under Sections 149, 141, 34 and 302 IPC. The trial court convicted more than five persons under Section 302 r/w Section 149 IPC. The High Court acquitted some of the accused resulting in reducing the number of the accused to less than five and thus rendered section 149 inapplicable. On appeal this Court, having regard to the murderous attack by the appellant, as disclosed by the eye-witnesses and the number and nature of injuries sustained, converted the conviction as one under Section 302 Section r/w Section 34 IPC.

In Marachalil Pakku and Anr. v. State of Madras AIR 1954 SC 648 seven accused were charged under Section 302 r/w Section 149 IPC. The trial court convicted two appellants along with five others of having constituted an unlawful assembly and committed murder and they were convicted under Section 302 r/w Section 149 IPC. The High Court, on appeal, gave benefit of doubt to five accused and acquitted them. In the appeal before this Court, it was argued that the said five accused having been acquitted and in the absence of a charge that five other unknown persons constituted an unlawful assembly, the two appellants could not be held members of the unlawful assembly which had the common object, the three Judge Bench of this Court said:-

> "We have not been able to understand how the High Court could acquit these persons having held that the evidence of P.Ws. 5 and 6 as to how Kannan was murdered by accused 1 and 2 stabbing him and the others holding him by his hands and legs, was true. It also said that with regard to participation of accused 3 to 7 they could not say that the prosecution evidence was unreliable. On these findings, in our opinion, no scope was left for introducing into the case the theory of the benefit of doubt. We think that accused 3 to 7 were wrongfully acquitted. Though their acquittal stands, that circumstance cannot affect the conviction of the appellants under section 302 read with section 149, I.P.C."

In Achhey Lal v. State of U.P. AIR 1978 SC 1233 as many as 15 named persons had taken part in the assault on the deceased. 14 accused had been acquitted by the High Court but the conviction and sentences awarded to the appellant by the Sessions Judge were upheld. This Court held that there is no finding by the High Court that after acquittal of the accused the unlawful assembly consisted of five persons or more, known or unknown, identified or unidentified, the provisions of Sections 149 and 147 cannot be invoked for convicting the sole accused as no individual act was assigned to him.

Analytical reading of catena of decisions of this Court, the following broad proposition of law clearly emerges: (a) the conviction under Section 302 simpliciter without aid of Section 149 is permissible if overt act is attributed to the accused resulting in the fatal injury which is independently sufficient in the ordinary course of nature to cause the death of the deceased and is supported by medical evidence; (b) wrongful acquittal recorded by the High Court, even if it stood, that circumstance would not impede the conviction of the appellant under Section 302 r/w Section 149 I.P.C. (c) charge under Section 302 with the aid of Section 149 could be converted into one under Section 302 r/w Section 34 if the criminal act done by several persons less than five in number in furtherance of common intention is proved.

We have already held that accused Nos. 3, 4, 5, 7, 8 and 10 have been wrongly acquitted by the High Court discarding the natural and reliable evidence tendered by three eye-witnesses P.Ws. 1 to 3. If that is so, the acquittal of accused Nos. 3, 4, 5, 7, 8 and 10 would not affect the conviction of the appellant under Section 302 with the aid of Section 149 though their acquittal stood because specific overt acts have been attributed to the appellant by eye-witnesses, corroborated by medical evidence, which are independently sufficient in the ordinary course of nature to cause the death of the deceased.

The consistent evidence of P.Ws. 1 to 3 is that after the bomb was hurled at the deceased, the deceased was driving his motor-cycle slowly. P.W.3, who was a pillion rider of the motor-cycle of the deceased, jumped out of the motor-cycle, rushed to the bush and watched the whole incident under the bush. He specifically stated that after the deceased fell down accused No. 1 hacked axe blows on the neck of the deceased. The same is the statement of P.W.-1, who was riding a scooter on the same road at that particular time. The same is the statement of P.W.2. P.W.2 was a pillion rider on the scooter of P.W.1. The witnesses and the accused are from the same village and the incident had happened on 13th October, 1992 at about 5.30 p.m. There cannot be any scope of mistaken identity of the accused. P.W.4 stated that he knew all the accused and the deceased. On the day of the incident, while proceeding on his tractor on the Pakalapadu major canal he saw all the accused armed with axes, spears and knives were going on the road.

Dr. G. Vijaya Saradhi was examined as P.W.9. He conducted post mortem examination of the deceased and found as many as 21 injuries, as referred to in the earlier part of the judgment. Injury Nos. 7, 9 and 10 are incise wounds. On internal examination, the doctor found, "neck shows upper air passes were cut. Left castrotid vessels were cut, muscles were cut. Haematoma present on left side of the neck. This corresponds to injuries 9 and 10." The doctor opined that "the patient would appear to have died of hemorrhage and shock, and injuries to upper air passages, manor vessels, and vital organs liver, kidney, resulting from multiple injuries." From the overt acts attributed to the accused appellant by P.Ws. 1 to 3, corroborated by medical evidence, it is apparent that the appellant has caused murderous assault resulting in the death of the deceased. The next contention of Mr. Subba Rao, learned counsel for the appellant that on the self same evidence, the other accused had been acquitted and, therefore, the appellant could not have been convicted relying upon the same evidence. This contention deserves to be rejected. Firstly, because we have already held that the acquittal of the other accused, rendered by the High Court, was wrong and based on misappreciation of evidence. Secondly, as pointed out, eye-witness version is supported by the

medical evidence attributing specific overt acts to the appellant. The ocular and medical evidence on record clearly establish the guilt of the appellant beyond reasonable doubt for causing the death of the deceased. For the reasons aforestated, there is no merit in this appeal and it is accordingly dismissed.