1998 SCC OnLine Kar 703 : (1999) 1 Kant LJ 303 (DB)

(Division Bench)

BEFORE B. PADMARAJ AND CHIDANANDA ULLAL, JJ.

Suresh and Others

Versus

State by T. Narasipura Police Station

Criminal Appeal No. 250 of 1996 connected with Criminal Appeal Nos. 338 and 448 of 1996

Decided on November 19, 1998

The Judgment of the Court was delivered by

1. All the above three appeals are interconnected inasmuch as they are directed against the common judgment and order of conviction and sentence as against one set of accused persons as well as the order of acquittal as against another set of accused persons dated 1-3-1996 in SC No. 69 of 1991 passed by the II Additional Sessions Judge, Mysore. The accused persons acquitted are accused 1 to 3, 6, 8 and 10 whereas accused persons convicted are 4, 5, 7, 9 and 11 when there were in all 11 accused persons who had taken trial before the learned Sessions Judge.

2. In the first appeal *i.e.*, Cri. A. No. 250 of 1996, accused 5-Suresh, accused 9-B.P. Parashivamurthy, accused 11-Basavaraju had challenged the above judgment and order of conviction and sentence under Sections 143, 147, 148, 341, 324, 302 read with Section 149 of the IPC. In the second appeal *i.e.*, Cri. A. No. 338 of 1996, accused 4-Mahalingu and accused 7-Sivamurthy had challenged their conviction and sentence also under Sections 143, 147, 148, 324, 341 and 302 read with Section 149 of the IPC.

3. The last and third appeal was filed by the State as against the accused 1-S. Jayashankar, accused 2-Shivamallu, S/o. Marappa, accused 3-G.V. Guruswamy, accused 6-B.S. Prabhuswamy, accused 8-Shi-vamallu, S/o. late Putta Madappa and accused 10-Shivaswamy to challenge the judgment and order of acquittal of the said accused persons of the offences punishable under Sections 143, 147, 323 and 341 read with Section 149 of the IPC, Section 324 read with Section 149 and further under Section 302 read with Section 149 of the IPC.

4. We heard the learned Counsel, Sri H.S. Chandramouli, appearing for the respondents-accused 5, 9 and 11 in the first appeal, Sri Anand appearing for Sri N. Shambamurthy and Associates for respondents-accused 4 and 7 in the second appeal and Sri B.R. Nanjundaiah, learned State Public Prosecutor appearing for the appellant-State in the third appeal. He had also appeared for the respondent-State in the first two appeals. We also heard Mahanthesh S. Hosmath, the learned Counsel appearing for the respondents-accused 1 to 3, 6, 8 and 10 in the last appeal preferred by the appellant-State.

5. For the purpose of convenience we refer to the appellants-accused persons as they were arrayed before the learned Sessions Judge. In all before the learned Sessions Judge, there were 11 accused persons and

they were commonly tried for the offences under Sections 143, 147, 148, 341, 323,

324, 302 read with Section 149 of the IPC.

6. Brief facts of the prosecution case are as hereunder:

7. That on 15-2-1991 at about 3.30 p.m. one Puttegowa, S/o. Lingegowda was murdered on a public road leading from Binakanahalli of T. Narasipura by the side of the land of one Balappa in Dinakarahalli. He died as a result of fatal assaults by hit of MO 2-the big stone (size stone) and MOs. 3 and 4-two small stones. It was alleged that when the big stone was thrown by the accused 9 at the deceased, Puttegowda, hitting him at his left ear while he had fallen on the ground, MOs. 3 and 4-small stones were hit of the deceased also on the right side of the hand by the accused 4 and 5 resulting in severe head injuries and brain injuries. It was also alleged that after suffering the said injuries by the MOs. 3 and 4, small stones and MO 2, big stone, the deceased fell unconscious right on the spot and that subsequently when he was taken to the K.R. Hospital at Mysore at the instance of P.W. 9-doctor at T. Narasipura Government Hospital, at a place called Kempaiahana Gundi, the deceased had succumbed to the injuries and died on his way to the said hospital.

8. That earlier to the above incident of fatal assaults on the deceased at about 3.00 p.m. on 15-2-1991, the accused persons being the members of unlawful assembly with common object to cause the death of the deceased, Puttegowda had also hurt P.W. 2-Nanjundi and P.W. 6-Nanjundegowda. When P.W. 6 was assaulted by the accused 3 by his fist on his face at the first instance, P.W. 2 was assaulted by the accused 5 by means of firewood stick (called as 'Saudeseelu') at the second. The incident had taken place in the following situations:

9. That at about 2.30 p.m. on that day *i.e.*, 15-2-1991 P.W. 1-Dollegowda, the deceased-Puttegowda, P.W. 6-Nanjudegowda, P.W. 2-Nanjundi and P.W. 3-Basavaraj left Binakanahalli in the mini lorry (also called as 'Tempo') belonging to the deceased-Puttegowda driven by P.W. 7-Majibullah. Earlier to that the deceased and his driver P.W. 7 had taken their food in the house of the deceased. All the above said persons left Binakanahalli and proceeded on the public road leading to T. Narasipura. At about 3.00 p.m. when they were going in the said mini lorry on the public road, near the land of one Balappa in Dinakarahalli village (also T. Narasipura Taluk), all the accused persons numbering 11 being the members of unlawful assembly and further having common object of causing either the death of Puttegowda or to hurt him, stopped the lorry and restrained the above said persons and the lorry driver from proceeding further towards T. Narasipura. All the accused persons earlier to the point of time of reaching of the lorry to the said place, were all sitting by both sides of the road. When the lorry was stopped, P.W. 7 was driving the lorry, by his left side in a row P.W. 1-Dollegowda, the deceased-Puttegowda and P.W. 6-Nanjundegowda were sitting in the cabin, whereas P.W. 2-Nanjundi and P.W. 3-Basavaraj were in the rear side (body part) of the lorry. All the accused persons stopped the lorry and prevented the same from proceeding further towards T. Narasipura.

Then P.W. 6, who was sitting by the side of left side window of the lorry asked the accused 10 as to why they have stopped the lorry. Then, the accused 3-Guruswamy opened the door of the cabin and pulled P.W. 6 out of the lorry and further he fisted P.W. 6 on his face as well as on his body and hands and that P.W. 6 was injured on his upper lip and P.W. 6 sped away from the spot and ran towards T. Narasipura. At that time, the accused 3-Guruswamy and accused 10 chased P.W. 6. It appears that both of them returned and joined the rest of the accused persons on the spot. At that time, P.W. 1-Dollegowda got down from the lorry and ran towards T. Narasipura and at that,

the accused 2-Shivamallu, accused 6-B.S. Prabhuswamy chased him. It was also alleged that accused 2 and 6 also came back to the spot of incident and joined the company of the rest of the accused persons. Having been frightened, P.W. 7-driver of the lorry also ran away from the scene and went towards T. Narasipura. At that P.W. 2-Nanjundi got down from the rear side of the lorry and at that he was assaulted by accused 5-Suresh by the firewood stick-MO 1 in his hand on his left leg, left hand and right thigh and at that the deceased Puttegowda interfered and tried to protect P.W. 2 and because of that intervention, the assault that was directed against P.W. 2 had landed on left hand of the deceased. It was further alleged that having spotted the deceased, accused 10 uttered that it is he who lodged a complaint to the police a day earlier and as such he should be finished. On such an utterance, the accused 7-Shivamurthy and accused 11-Basavaraj held the deceased from both sides and that the accused 5-Suresh and accused 4-Mahalingu had pelted with MOs. 3 and 4-small stones in their hands on the rear side of the head of the deceased. It is also alleged that the accused 5-Suresh earlier had also assaulted with the firewood stick-MO 1 in his hand on the head of the deceased. That, because of the said injuries suffered by the deceased, Puttegowda, he fell with his back on the ground and at that accused 9-Parashivamurthy lifted MO 2, big stone weighing 20 to 25 kgs. and threw towards the head of the deceased. That MO 2-big stone thus hit by the accused 9 on the left ear of the deceased, that because of the said injuries, blood started oozing out from the nose and mouth of the deceased. It is also stated that the accused persons cried that the deceased, Puttegowda died and so crying out all the accused persons ran away from the scene.

10. The further case of the prosecution is that P.W. 2-Nanjundi and P.W. 3-Basavaraju were the eye witnesses to the entire incident of stopping of the lorry, assaulting of P.W. 6 chasing of P.W. 6 and P.W. 1 and further to the incident of assault on P.W. 2 and further the incident of fatal assaults on the deceased, Puttegowda. On hearing the commotion and further having informed about the above incident, P.W. 8-Shivaswamy and P.W. 9 visited the spot and both of them had seen the deceased lying on the ground and P.Ws. 2 and 3 standing by the side of the road and that both P.Ws. 8 and 9 with an intention to fetch a vehicle for the purpose of transportation of the injured, Puttegowda had started walking towards T. Narasipura. That, they have seen P.W. 20-P.C., getting down from the bus and coming towards Binakanahalli. It appears that P.W. 20 was drafted for bundobust duty in Binakanahalli as

there was commotion in the village due to conflict between two social groups *i.e.*, Lingayaths and Kurubas. That P.Ws. 8, 9 and 20-the P.C. came to the spot and by the time P.W. 6 brought a taxi driven by P.W. 13, Puttamada. That thereafter, P.Ws. 6, 8, 9 and 20 took the deceased to T. Narasipura Government Hospital and P.W. 12, the doctor who was then present in the Government Hospital in T. Narasipura gave the first aid to the deceased, then in injured condition and he advised the said persons who carried the deceased to his hospital to take the deceased to the K.R. Hospital. That, earlier to it, P.W. 1 having spotted, P.W. 6 going by a taxi to the Government Hospital, had also reached the hospital. Thereafter P.Ws. 1, 6, 8, 9 and 20 had left T. Narasipura to Mysore to admit the deceased to the K.R. Hospital at Mysore. The car was driven by P.W. 13, Puttamada. That, when the car had reached a place called ‘Kempaiahanagundi’ the deceased succumbed to the injuries and with a result the dead body of the deceased was carried by the above said persons to T. Narasipura Police Station.

11. It appears that earlier to the reaching of the dead body of the deceased, the eldest brother of the deceased by name Lingegowda, P.W. 4 having been informed of the assault on the deceased lodged a complaint, Ex. P. 1 at about 5.00 p.m. and the Head Constable and the Station House Officer, P.W. 25 had registered a case in Crime No. 38 of 1991 for the offence under Sections 143, 147, 341 and 307 read with Section 149 of the IPC as against the accused 1 to 10. It also appears that P.W. 4 did not give the name of the accused 11 when so lodged a complaint at the first instance. That on return of the car carrying the deceased to the police station. P.W. 1 gave a report marked as Ex. P. 23 to the police, narrating the incident of fatal assault on the deceased and further the deceased succumbing to the injuries at Kempaiahnagundi on their way to K.R. Hospital. That, upon report Ex. P. 23, the Circle Inspector of Police and the Investigating Officer, P.W. 26, registered the second FIR to convert the offence under Section 307 of the IPC as one under Section 302 as against all the 11 accused persons. That, P.W. 26, the Investigation Officer on completion of the investigation of the case had filed the charge-sheet before the jurisdictional Magistrate against all the 11 accused persons for the offence under Sections 143, 147, 148, 341, 323, 324 and 302 read with Section 149 of the IPC.

12. On committal to sessions, the learned Sessions Judge had framed charges as against all the accused persons for the offences under the above Sections and all the accused persons pleaded not guilty before the learned Sessions Judge, whereupon they have taken the trial before the learned Sessions Judge. To sustain the charge, the prosecution had examined in all 26 witnesses and they include the material witnesses, P.W. 1-Dollegowda, P.W. 2 (injured eye witness)-Nanjundi @ Nanjundegowda, P.W. 3-Basavaraju (another eye-witness), P.W. 4-Lingegowda, who had lodged the first complaint-Ex. P. 1, P.W. 5-Dr. Durgesh, who had conducted the autopsy on the dead body of the deceased, P.W. 6-Nanjunde Gowda, yet another injured eye witness, P.W. 7-driver of the mini lorry, Mujibullah, P.Ws. 8 and 9-Shivaswamy and Nagaraja, who had visited the spot immediately after the incident, P.W. 12-Dr. N.

Madappa, who had treated the deceased at the first instance in T. Narasipura Hospital, P.W. 13-Puttamada, the driver of the car shifting the deceased from the spot, P.W. 18-Dr. Jayakumar, who had treated the injured P.Ws. 2 and 6, P.W. 24-N.M. Mahadeva, the P.C. who had carried the FIR, P.W. 26-the Investigating Officer. The prosecution had also furnished 36 documents marked as Ex. P. 1 to Ex. P. 36 and among them the relevant documents are Ex. P. 1 the first complaint by P.W. 4, Ex. P. 2-P.M. report, Exs. P. 3 and P. 4-the opinions of the doctors, Ex. P. 5 the spot mahazar, Ex. P. 6-inquest mahazar, Ex. P. 7 sketch of the scene of offence, Exs. P. 8, 12 and 13 wound certificates of P.Ws. 2 and 6 respectively, Ex. P. 25-the first FIR. Ex. P. 30-the attendance list showing absence of accused 1 in the meeting held at the Taluk Panchayath Samithi, Ex. P. 31-the second FIR and Ex. P. 33-the FSL report. Besides the above documents, the prosecution had also produced 11 Material Objects. The are MO 1-firewood stick (known as ‘Saudeseelu’ in Kannada), MO 2-big stone, MOs. 3 and 4-the two small stones, MOs. 5 to 10, the bloodstained clothes of the deceased and MO 11 are the plastic boxes containing bloodstained and unstained mud.

13. That the learned Sessions Judge on appreciation of the material witnesses both oral and documentary and further the material objects produced by the prosecution before him had passed the impugned judgment and further the order as to recording the conviction of two sets of accused persons for committal of two different sets of

offences and further acquitting the third set of accused persons by extending the benefit of doubt to them. If we read the impugned judgment and order as to the conviction and sentence and further the order as to the acquittal, it is clear that the learned Sessions Judge had held the accused 4-Mahalingu, accused 5-Suresh, accused 7-Shivamurthy, accused 9-B.P. Parashivamurthy and further accused 11-Basavaraju guilty of the offence under Sections 143, 147, 148, 341, 324, 302 read with Section 149 of the IPC and convicted them for various terms including the life imprisonment for the offence under Section 302. He had also directed that the substantial sentence were to run concurrently.

14. In para 49 of the impugned judgment read as hereunder as to the offences the accused 4, 5, 7, 9 and 11 had committed:

(a) As against accused 7 and 11: conviction for the offences committed by them under Sections 143, 341 and 302 read with Section 149 of the IPC;

(b) As against accused 7 and 11: conviction for the offences committed by them under Section 147 of the IPC;

(c) As against accused 4, 5 and 9: conviction for the offences committed by them under Section 148 of the IPC;

(d) As against accused 5: conviction for the offence committed by him under Section 324 of the IPC;

(e) As against accused 4, 7, 9 and 11: conviction for the offences committed by them under Section 324 read with Section 149 of the IPC;

(f) As against accused 4 and 9: conviction for the offences committed by them under Sections 143, 341, 302 of the IPC.

15. The order as to the sentence in the said para 49 of the impugned judgment had imposed the following sentences as against the accused 4, 5, 7, 9 and 11:

(i) As against accused 4-Mahalingu	(a) SI for 6 months for the offence under Section 148 of the IPC. (b) SI for 1 month for the offence under Section 149 of the IPC. (c) SI for 1 month for the offence under Section 324 of the IPC. (d) Imprisonment for life together with fine of Rs. 500/- in default, to undergo RI for one month for the offence under Section 302.
(ii) As against accused 5-Suresh	(a) SI for 6 months for the offence under Section 148 of the IPC. (b) SI for one month under Section 341 of the IPC. (c) SI for one month under Section 324 of the IPC. (d) Imprisonment for life together with fine of Rs. 500/- in default, to undergo RI for one month for the offence under Section 302 of the IPC.
(iii) As against accused 7-	(a) SI for 6 months under Section 147 of the

Shivamurthy	IPC. (b) SI for 1 month under Section 341 of the IPC. (c) SI for 1 month under Section 324 read with Section 149 of the IPC. (d) Imprisonment for life together with fine of Rs. 500/- in default, to undergo RI for 1 month for the offence under Section 302 read with Section 149 of the IPC.
	(a) SI for 6 months under Section 147 of the IPC.

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(iv) As against accused 11-Basavaraju	
	(b) SI for 1 month under Section 341 of the IPC. (c) SI for 1 month under Section 324 read with Section 149 of the IPC. (d) Imprisonment for life together with fine of Rs. 500/- in default, to undergo RI for 1 month under Section 302 read with Section 149 of the IPC.
(v) As against accused 9-B.P. Parashivamuruthy	(a) SI for 6 months under Section 148 of the IPC. (b) SI for 1 month under Section 341 of the IPC. (c) SI for 1 month under Section 324 read with Section 149 of the IPC. (d) Imprisonment for life together with fine of Rs. 500/- in default, to undergo RI for 1 month under Section 302 of the IPC.

16. Though the learned Sessions Judge had convicted and sentenced the respondents-accused 4, 5, 7, 9 and 11 as above he had acquitted accused 1 to 3, 6, 8 and 10, for according to him, the charges against them were not proved beyond all reasonable doubt and furthermore they were entitled to for benefit of doubt. In para 45 of the impugned judgment, the learned Sessions Judge had observed that though there is oral evidence by P.Ws. 1 and 2 on record to show that the respondent-accused 10 had instigated and abetted the assault of the deceased, there is no evidence on record to show that the said accused persons had actively participated in the committal of offences by them and that bearing the said circumstances in mind, there arise some doubts regarding the very presence of the accused 10 on the spot and that though there is evidence on record to show that the accused 1 to 3, 6, 8 and 10, were present on the spot, that evidence could not be said as conclusive to prove their presence on the spot. In the said circumstances the learned Sessions Judge had also observed therein, that the said accused persons were entitled for the benefit of doubt and accordingly, the learned Sessions Judge had recorded an order of acquittal as against the said accused persons. It is further observed in para 44 of the impugned judgment that though according to the prosecution witness there were 11 accused persons in the unlawful assembly, it is in the evidence of P.W. 1 as well as in the

evidence of P.Ws. 2 and 3 that the after Lingegowda was fisted by

accused 3, he ran away towards T. Narasipura side and he was chased by accused 3 and 10. In the like manner, it is also in the evidence of P.Ws. 2 and 3 that when P.W. 1-Dollegowda started running away from the scene towards T. Narasipura side, the accused 2-Shivaswamy and accused 6-Prabhuswamy chased him and further that, since there is no evidence to show that the said accused 3, 10, 2 and 6 thus chased P.Ws. 1 and 6 had returned to joint the rest of the accused persons on the spot, there is a doubt as to their participation in the very offence. It is further observed in the said para by the learned Sessions Judge that there is evidence to show that accused 1 was the main person in the whole episode and further that the evidence on record to show that on 15-2-1991, he did not participate in the Taluk Panchayat Samithi meeting and just because of that it could not be said that accused 1 had also participated in the offence. By taking the said 3 circumstances, the learned Sessions Judge had observed that the accused 1 to 3, 6, 8 and 10 had to be given the benefit of doubt. However, in the impugned judgment, it is not forthcoming as to what reason the learned Sessions Judge had observed that the accused 8 too had to be given the benefit of doubt, in other words, it is clear from the impugned judgment and the order of conviction and further the order of acquittal that while the learned Sessions Judge had convicted the accused 4, 5, 7, 9 and 11 for various offences he had acquitted the accused 1 to 3, 6, 8 and 10 by extending the benefit of doubt to them.

17. As stated above there are 3 appeals now before this Court when the first two appeals are filed by the first set of accused persons *i.e.*, accused 4, 5, 7, 9 and 11 for their conviction under different offences as stated above, in the third appeal, the appellant-State had challenged the acquittal of accused 1 to 3, 6, 8 and 10.

18. The learned Counsel, Sri Chandramouli appearing for the accused 5, 9 and 11 argued at the first place that in filing the complaint either by P.W. 1 or for that matter P.W. 4 the name of the 11th accused had not at all occurred and as such the said accused was falsely implicated in the case. In this connection, it was also argued by him that two FIRs Exs. P. 25 and 26 had reached the jurisdictional Magistrate at about 10.00 p.m. when the incident in question alleged to have taken place at about 3.00 p.m. on that day. It was also argued by him in this regard that it was not in dispute before the learned Sessions Judge that the alleged incident was the result of a communal clash between the two social groups, one lead by the 'Kurubas' (prosecuting party) and another lead by the 'Lingayaths' (the prosecuted party) and as such it could not be ruled out that a false case came to be foisted as against the accused persons belonging to lingayath community. Yet another aspect of the case, Sri Chandramouli highlighted is that all the prosecution witnesses were closely related to the deceased, Puttegowda and as such they have to be termed as 'interested witnesses' and that being so, according to him, the learned Sessions Judge would have been quite cautious in weighing their evidence, more so, the background of the case being one of a communal clash between two social groups. Incidentally, it was also pointed out by Sri Chandramouli that the misunderstanding between

two communities had its origin in rejection of the request of P.W. 4, Lingegowda by one Gurumallappa, the father of accused 10 to sell part of his land at the instance of

P.W. 4 as he had no pathway to reach his land that was situated beyond the land of Gurumallappa and that despite that the prosecution neither cited nor examined the said Gurumallappa as a witness in the case. According to Sri Chandramouli, the said Gurumulappa was a material witness to the prosecution case and non-examination of the said witness was fatal to the case of the prosecution.

19. While turning to the evidence of the injured witnesses-P.Ws. 2 and 6 in the case, it was argued by Sri Chandramouli that there was no truth in their evidence that both of them were injured as P.W. 18-Dr. S. Jayakumar in his evidence had clearly deposed that the said two witnesses were examined as late as on 16-2-1991 when they were sent along with P.C. 989 of T. Narasipura Police Station at about 7.10 p.m. and that the history of the injuries mentioned in the wound certificates-Exs. P. 12 and 13 in respect of the said two witnesses were with regard to the injuries suffered by them the day previous. In this context, he had drawn our attention to the evidence of P.W. 18 that the injuries on them were found to have occurred about 24 or 36 hours next prior to his examination. In this connection, it is also pointed out by Sri Chandramouli that if it was true that these two witnesses were injured in the manner presented by the prosecution before the learned Sessions Judge, they would have been naturally subjected to the medical examination by P.W. 18 immediately after lodging of the complaint either by P.W. 1 or P.W. 4 as the case may be. It was also argued in this connection by the learned Counsel that the very fact that the said two witnesses were sent to medical examination with an inordinate delay goes to show that there was no truth in the prosecution version and as such according to Sri Chandramouli, the evidence of P.Ws. 2 and 6 is of no avail to the prosecution.

20. While referring to the evidence of other material witnesses *viz.*, P.Ws. 1 and 4, Sri Chandramouli argued that their evidence was also of less assistance to the prosecution as they also turned to be closely related to the deceased, Puttegowda, since P.W. 1 was the cousin of the deceased and P.W. 4 was the eldest brother of the deceased. In the same way while referring to the reference of P.Ws. 8 and 9, the witnesses who had visited the spot immediately after the alleged incident of assault could also be termed as 'interested witnesses' as they also belonged to the 'Kuruba' community and as such their evidence also had to be treated as tainted evidence. Such a submission was made by Sri Chandramouli for the reason that the entire incident stated to have occurred in the background of hostilities between the two communities. Sri Chandramouli had also cited before us good number of decision mainly on the point as to how the evidence of the 'interested witnesses' has to be appreciated by the Courts, they are as follows:

1. *Sharad Birdhichand Sarda* v. *State of Maharashtra*[1].

2. *Badruddin Rukonddim Karpude* v. *State of Maharashtra*[2].

3. *State of Punjab and Gurmej Singh* v. *Jit Singh*[3].

4. *Sevi* v. *State of Tamil Nadu*[4].

5. *Ram Ashrit* v. *State of Bihar*[5].

Fakrusab Hussainsab v. *State of Karnataka*[6].

21. (All the above decisions are on the point of appreciation of evidence of interested or partisan witnesses)

7. *Varghese* v. *State of Kerala*[7] (on the point that the recovery of MOs. in the open

field).

8. *State of Uttar Pradesh* v. *Jashoda Nandan Gupta*[8].

9. *Rahman* v. *State of Uttar Pradesh*[9] (on the point that subsequent conduct of accused-absconding by itself is not conclusive either of guilt or of guilty conscience).

10. *State of Maharashtra* v. *Suresh*[10] (on the point that accused giving only one blow on the head-accused held guilty under Section 325 and not under Section 302).

11. *Badri* v. *State of Rajastan*[11] (it is the quality and not quantity of evidence matters).

12. *Chanan Singh* v. *State of Haryana*[12]: (regarding abnormal conduct of the accused person after the occurrence of the incident).

13. *Divakar Neelakanta Hegde* v. *State of Karnataka*[13] (with regard to the benefit of doubt).

14. *N.D. Dhayagude* v. *State of Maharashtra*[14]: (Reg: It would not be safe to rely upon the evidence when the same is substantially different from the statement before the police and there are large number of contradictions in the evidence).

22. Yet another point that was argued by Sri Chandramouli was with regard to the recovery of MO 1-firewood stick ('Saudeseelu'), MO 2-big

stone and MO 3-two small stones. It was argued by him that none of the above MOs. was recovered at the instance of any of the accused persons, for the evidence of P.W. 2 was to the effect that all the said MOs. were recovered right from the spot and that P.W. 2 had shown the said MOs. which were used for the committal of the offence. In the said state of affairs, he submitted that it could not be said that the recovery of the MOs. were proved by the prosecution before the learned Sessions Judge.

23. To sum up his argument, Sri Chandramouli submitted that the prosecution had miserably failed to prove the guilt of the accused 5, 9 and 11 and as such he prayed that the impugned judgment and order of conviction, convicting the accused persons 5, 9 and 11 whom he represented be set aside.

24. On the other hnd, Sri Anand appearing for accused 4 and 7 argued on the similar lines. He submitted that P.Ws. 2 and 3 were related to P.W. 1, whereas P.W. 4 was the cousin of P.W. 1, let apart, P.Ws. 2 and 3 were also related to P.W. 6. He pointed out that all the said witnesses were equally related to the deceased, Puttegowda as the deceased, Puttegowda was the youngest brother of P.W. 4-the complainant and P.W. 6-the injured witness. Therefore, according to Sri Anand all the above said material witnesses were 'interested witnesses' and as such the Trial Court could have been cautious enough to scrutinise the evidence of the said witness before the learned Sessions Judge closely and carefully. According to Sri Anand, it is that exercise the Trial Court had failed to do and it is because of that it had reached a wrong conclusion to hold that the accused 4 and 7 were guilty of the offences. With regard to the delay in examining of the injured P.Ws. 2 and 6, Sri Anand argued that the delay of examination of the said witnesses by P.W. 18, in the facts and circumstances of the case appeared to be unnatural and as such their evidence was not trustworthy.

25. While referring to Ex. P-1 the complaint that was lodged by P.W. 4-the elder brother of the deceased, it was argued by Sri Anand that the said witness had deposed before the learned Sessions Judge that for inclusion of the names of accused 1 to 10

(barring the name of accused 11), the name were supplied to him by P.W. 6, whereas the P.W. 6 had clearly deposed that he did not supply the names to P.W. 4. It was also argued by him in this regard that even in the second complaint by P.W. 1, he had stated therein that he had not given any particulars with regard to the alleged incident of assault on P.Ws. 2 and 6 and further with regard to the fatal assaults on the deceased, Puttegowda. Therefore, his submission was that, both the FIRs came to be registered by the police in very suspicious circumstances. According to him, the very origin of the alleged incident of assault was suppressed by the police. It was also in his argument that when the deceased was alleged to have been taken to the police station immediately after the first aid given by P.W. 12-the doctor and further when P.W. 20-the PC who was stated to have accompanied the deceased to the police station, no complaint was got lodged by the police. Hence, his submission is that the alleged complaint by P.W. 4 at the first instance and by P.W. 1 at the second did not

come at the earliest point of time. According to Sri Anand, the said delay by the police was for obvious reason that the police wanted to fix his clients falsely. Hence, his submission in this regard is that his clients were falsely implicated in the case when they had nothing to do with the crime.

26. Sri Anand had also argued before us that the FIR had reached the jurisdictional Magistrate as late as at 10 or 10.05 p.m. on the day of incident, though the Magistrate was in the vicinity of the police station to be reached within 5 minutes. In this regard, he had taken us through the evidence of P.W. 17-the PC who had carried the FIR. With reference to his evidence, Sri Anand pointed out that according to P.W. 17, the FIR was given to him at about 6.00 p.m. and if the distance was short as above, there was no reason for the FIR to reach at about 10.00 p.m. on that day. In the said situation, he argued that the manipulation of the police was very much manifest and as such the prosecution case was not one to be believed on its face value. He therefore, prayed that the benefit of doubt be extended to his clients too by setting aside the impugned judgment and order of conviction as against them.

27. Per contra, the argument of the learned Government Pleader appearing for the appellant-State is two fold. Firstly to oppose the first two appeals filed by the accused 4, 5, 7, 9 and 11 and secondly, to set aside the same insofar as the same related to the acquittal of the accused 1 to 3, 6, 8 and 10. While supporting the impugned judgment and order of conviction as against the first set of accused persons in the first two appeals, it was argued by the learned State Public Prosecutor that the learned Sessions Judge had appreciated the material evidence on record in its proper perspective and as such there was no error whatsoever committed by the learned Sessions Judge in passing the same. Sri Vishwanath had also taken us through the evidence of material witnesses, P.Ws. 1 and 4 the complainants, P.Ws. 2 and 6-the injured eye-witnesses, P.W. 3 yet another eye-witness, P.W. 5-the doctor witness, who had conducted post mortem on the dead body of the deceased, P.W. 6 the witness who spoke to the assault on him by accused 3 and further as to his chase by the accused 3 and 10 and P.W. 7, who had driven the mini lorry, and further witnessed the assault on P.W. 6 as above, evidence of P.Ws. 8 and 9, who had visited the spot immediately after the incident, P.W. 12-the doctor witness, who had seen the deceased at the first instance in T. Narasipura, P.W. 13-the car driver, who had shifted the deceased from the place of incident, P.W. 15 the witness who shifted the deceased from the spot in injured condition, and further issued Exs. P-12 and 13 wound certificates, P.W. 20-the PC, who had accompanied P.W. 6 at the first instance to the

Government Hospital at T. Narasipura and at the second to the T. Narasipura Police Station and further accompanied the dead body of the deceased to the K.R. Hospital at Mysore and P.W. 26-the Investigating Officer.

28. While taking us through the evidence of the said material witnesses and further taking us through the impugned judgment, Sri Vishwanath pointed out that the learned Sessions Judge had erroneously

held that the accused 1 to 3, 6, 8 and 10 were entitled to the benefit of doubt as the prosecution had proved their guilt beyond all reasonable doubt. According to him, if the evidence of the said witness were held to be admissible as against the convicted accused persons, the same was as well could have been held admissible to prove the guilt of the acquitted persons too. In this regard, he had vehemently argued that all the 11 accused persons had formed themselves into a common unlawful assembly and they at the first instance stopped the mini lorry while P.W. 1, the deceased and P.W. 6 were in the mini lorry cabin whereas P.Ws. 2 and 3 were in the rear side (body part) of the mini lorry and further assaulted at the second P.W. 6, and P.W. 2 and finally assaulted the deceased fatally. It was also argued by him that though it was the accused 3 who had assaulted P.W. 6 at the first instance and accused 5 assaulted P.W. 2 at the second and finally accused 4, 5 and 9 fatally assaulted the deceased by pelting two small stones and a big stone marked MOs. 2 to 4, the said acts were because of their common intention either to kill the deceased or to cause injuries to his party in the mini lorry at the relevant point of time. It was also argued by him that one cannot forget for a moment that the accused 10 had instigated the other accused persons to fatally attack and assault the deceased having seen the deceased on the road on climbing down from the mini lorry. According to Sri Vishwanath every fact of the case and every circumstance of the case were fully proved by the prosecution before the learned Sessions Judge beyond all reasonable doubt that it is the accused 1 to 11 who having formed themselves into an unlawful assembly with the motive either to murder the deceased or assault his party had committed the offences and that being so, according to him, the question of giving the benefit of doubt to the accused 1 to 3, 6, 8 and 10 in the hands of the learned Sessions Judge in passing the impugned judgment and order of acquittal did not arise at all. Incidentally, it was also argued by Sri Vishwanath that even if the name of the accused 11 was not mentioned at the first instance in registering the FIR-Exs. P. 25 and P. 26 was of no consequence for they were only the FIRs that came to be filed and as such it could not be argued by the other side that non-inclusion of the name of accused 11 in two FIRs would be fatal to the case of the prosecution.

29. In the said view of the matter, he prayed that this Court be pleased to confirm the impugned judgment and order of conviction as against the accused persons who had resorted the first two appeals and he further prayed that the impugned judgment and order of acquittal in so far as the same related to the acquittal of the accused 1 to 3, 6, 8 and 10 be set aside. He also prayed that the said acquitted persons too be convicted of various offences as they too have committed along with the convicted accused persons.

30. The learned Government Pleader had also cited before me the following decisions in support of his case:

1. *State of Rajasthan* v. *Smt. Kalki*[15] (the Supreme Court held that the interested witness is one when he or she derives certain benefit from the litigation and further that the witness who was natural one and was only possible eye witness in the circumstances of a case could not be termed as interested witness).

2. *State of Punjab* v. *Wassan Singh*[16] (In the said decision it was held by the Supreme Court that mere relationship with the deceased was not a good ground for discarding their evidence when their presence on the scene of occurrence was natural).
3. *State of Uttar Pradesh* v. *M.K. Anthony*[17] (On the point that in the matter of appreciation of evidence, evidence found generally reliable should be accepted while no importance should be given to minor discrepancies and technical errors).
4. *Angad* v. *State of Maharshtra*[18] (Held, Evidence of eye-witnesses cannot be rejected only on the ground that they did not intervene to save the deceased).
5. *Narpal Singh* v. *State of Haryana*[19] (Held therein that examination by police of an eye witness with a delay of 20 days may be a lapse on the part of the police and that cannot be sufficient ground to reject the evidence, if there is no defect in his evidence).
6. *Lalji* v. *State of Uttar Pradesh*[20] (On the point that for conviction under Section 302 with the aid of Section 149, relevant question to be examined by Court is whether the accused was a member of unlawful assembly or not and whether he actually took active part in the crime or not).
7. *State of Maharashtra* v. *Kalu Shivram Jagtap*[21] (Held, where a common intention of two or more persons to kill the deceased is established, the question as to who gave the fatal blow is wholly irrelevant and once the medical evidence shows that the injuries caused by one or the other of the accused was sufficient in the ordinary course of nature to cause death).
8. *Kartar Singh* v. *State of Punjab*[22] (Held, non-mention of some accused's name in the FIR is not fatal to the case of the prosecution).

9. *Rajinder Singh* v. *State of Delhi*[23] (Held, Evidence Act, Section 3 — Appreciation of evidence that the prosecution witnesses are close relations of deceased is no valid reason for discarding their evidence).

31. Now we advert to the argument advanced by the learned Counsel for the accused persons who were acquitted of the offence *i.e.* accused 1 to 3, 6, 8 and 10, represented Sri Mahanthesh S. Hosmath. Sri Hosmath had taken us through the evidence on record of the material witnesses and further the impugned judgment and order of acquittal insofar as his clients are concerned. While supporting the same, Sri Hosmath submitted that the learned Sessions Judge had rightly held that his clients were entitled to the benefit of doubt; even otherwise according to him, the evidence on record could not implicate his clients in any way. It was also pointed out by him that this Court should be slow in interfering with the order of acquittal in appeal filed by the appellant-State, particularly when the case was with the background of

communal ill-will between the two social groups in Bennakanahalli Village and almost all the witnesses examined by the prosecution were either closely related or belonging to the clan of the deceased.

32. Therefore, he prayed that the impugned judgment and order in so far as the same related to the accused 1 to 3, 6, 8 and 10 be confirmed.

33. In the light of the above arguments advanced by the respective Counsel of the accused persons and further the learned Government Pleader representing the State, the following points arise for our consideration.—

(i) Whether the impugned judgment and order of conviction, convicting the accused 4, 5, 7, 9 and 11 are just and proper or not?

(ii) Whether the impugned judgment and order of acquittal acquitting the accused 1 to 3, 6, 8 and 10 are just and proper or not?

(iii) If not, in the facts and circumstances of the case *vis-a-vis* evidence on record which accused persons committed what offences and liable for what sentences?

34. Now we consider the above points as hereunder:

35. Regarding Point Nos. (i) and (ii):

36. It is an admitted fact that the two social groups, 'Kurubas' on the one side and the 'Lingayaths' on the other in Benakanahalli Village were on warpath and were carrying vengeance as against one another and it had started with placing of hurdle on P.W. 4-Lingegowda-the eldest brother of the deceased. Puttegowda to reach his landlocked land, as he could reach that land only by passing through the land of one Gurumallappa, the father of accused 10, a member of Lingayath community. It was alleged that, to make a passage for P.W. 4, the said Gurumallappa at one point of time agreed to sell 3 guntas of his land to P.W. 4 and with the said proposed concession was sabotaged with the intervention of the

Lingayath leaders, particularly accused 1, there ensued quarrels between two groups by lodging complaints against one another with the allegation that one had destroyed the property of the other and finally that had rested with a complaint on 14-2-1991 by P.W. 15 as against the Lingayath group when it was lodged to the effect that he and the deceased, Puttegowda were pelted with stones while they were going in the scooter of P.W. 15, the day previous.

37. That, because of the tension between the two social groups, the local police was obliged to do some 'bandobust' in their village, Binakanahalli, and in the process, P.W. 20 was posted in the village to look after the bandobust. That at 12.00 noon on the very next day *i.e.* 15-2-1991, the DSP called the accused 1 to 3, 8 and 10 near the dairy in Benakanahally Village. The accused 4 and 5 also joined them and that the DSP after holding a discussion with the said accused persons had warned them and others. It was further, in their evidence that at about 3.30 p.m. on the very day *i.e.*, 15-2-1991, the deceased, P.W. 1, P.W. 6, P.Ws. 2 and 3 were travelling in the mini lorry driven by P.W. 7 and they were going from Benakanahalli to T. Narasipura and that on their way, the accused persons stopped the mini lorry and restrained it from proceeding further to T. Narasipura side. That, the mini lorry belonged to the deceased and was driven by P.W. 7, Mujibulla. It is also in the evidence on record, particularly, the eye witnesses P.Ws. 2 (also the injured) and 3 and further in the evidence of injured P.W. 6, P.W. 1 and further P.W. 7-the driver of the mini lorry as to the actual incident that had taken place. When the injured-eye witness P.W. 2 and the eye witness P.W. 3 spoke to the entire incident from the beginning to the end, the injured-

P.W. 6, P.W. 1 and P.W. 7 had spoken to the part of the incident as the said three witnesses were made to leave the spot one after another. Nevertheless, by reading of their evidence, it does not occur to one that they were in any way spoke falsehood as against the accused persons. It is to be noted that the evidence of injured eye-witness -P.W. 2 and eye-witness-P.W. 3 is consistent, cogent and acceptable. It is in their evidence that the mini lorry belonging to the deceased had left Benakanahally at about 2.30 p.m. on 15-2-1991 and it was on its way to T. Narasipura and that when the same had reached the land of one Mallappa, the accused persons sitting on both sides of the road stopped the mini lorry and did not allow the same to proceed further and that when accused 5 was having the firewood stick ('saudeseelu'), accused 4 was having a small stone in his hand and that P.W. 6 who was sitting in the cabin by the left side window asked the accused persons as to why they stopped the lorry and at that accused 3 opened the cabin of the mini lorry and pulled P.W. 6 out of the mini lorry. That the accused 3 fisted on the face, body and further the hands of P.W. 6 and in the meantime, P.W. 7-the lorry driver sped away from the scene having been frightened and he ran towards T. Narasipura side. That, P.W. 6 having received the fist blows, ran away from the place towards T. Narasipura side. That, the accused 3 and 10 chased P.W. 6, but he could not be caught hold of. That P.W. 1 was sitting by the side of P.W. 7-the driver of the mini lorry, got down from the mini lorry and he was chased

by the accused 2 and 6. But, P.W. 1 also could not be held by both of them as he escaped and ran towards T. Narasipura side. That, the accused 3, 10, 2 and 6 returned to the spot. It is also in the evidence on record particularly by P.Ws. 2 and 3 that P.W. 2 who was sitting in the rear side of the mini lorry climbed down from the mini lorry and at that P.W. 5 started assaulting P.W. 2 by firewood stick-MO 1 and then the deceased, Puttegowda, who was only the person left in the cabin got down from the mini lorry and tried to protect P.W. 2 and in the process he had also received assault by MO 1-firewood stick in the hands of accused 5 and on citing the deceased, Puttegowda, the accused 10 shouted that it is he who had lodged Ex. P-11-the police complaint in connection with the pelting of stones on P.W. 15 and the deceased by lingayath group when both of them were in the scooter and he should be done away with. That, having been instigated by the said utterance, the accused 5 threw away MO 1-firewood stick in his hand and picked up a small stone lying on the road. That the accused 7 and 11 held the deceased from both sides and at that the accused 4 and 5 pelted two small stones-MOs. 3 and 4 from both sides of his head (on the rear side of his head) causing bleeding injuries and with the said injuries sustained the deceased tumbled down with his back on the ground and at that accused 9 lifted 20 kg. big stone-MO 2 lying on the ground there around and threw the same towards the deceased. That, the pointed edge of MO 2 hit the left ear side of the head of the deceased and because of the said injuries by MOs. 3 and 4, small stones and MO 2-big size stone, the deceased started bleeding on his head and the ear and the deceased was lying on the ground totally unconscious. That, the said evidence of lying condition of the deceased and the presence of P.Ws. 2 and 3 on the spot was corroborated by the evidence of P.Ws. 8 and 9, who visited the spot having heard about the incident while they were in Benakanahalli village. Both P.Ws. 8 and 9 spoke about the presence of P.Ws. 2 and 3 on the road side, lying down of the deceased in an injured and unconscious condition as above and further the presence of the mini lorry. The said evidence was further corroborated by P.W. 20, the constable who was posted to do bandobust duty in Benakanahalli Village for he being cited by P.Ws. 8 and 9 at Benakanahalli gate was also taken to the spot by P.Ws. 8 and 9 in the car fetched by

P.W. 6 to shift the deceased, Puttegowda. All the said independent witnesses, P.Ws. 8, 9 and 20 no way related to the deceased had further spoken about their witnessing P.W. 6 shifting the deceased in an injured condition in the car driven by P.W. 13 and they also spoke about the presence of P.Ws. 2 and 3 on the spot.

38. From the above clinching evidence on record, we are not left with any doubt that the incident in question had occurred in the manner the prosecution had presented its case before the learned Sessions Judge. But in the circumstances, according to us, the whole incident had taken place in two parts. The first part is that all the accused persons forming themselves into an unlawful assembly with the intention to cause injury to the deceased and his party and thus stopping the mini lorry. At that time, accused 5 was armed with a firewood stick-MO 1 and accused 4

was armed with a small stone in his hand. The accused 4 armed with a stone in his hand and in furtherance of bad motive, the accused 3 pulled out P.W. 6 from the mini lorry and fisted P.W. 6 on his face, hands and all over his body resulting in his fleeing away from the scene by P.W. 6. That, accused 3 and 10 chased P.W. 6 to some distance and they returned to join the main group still on the road near the mini lorry. That thereafter, P.W. 7-the driver of the mini lorry, having identified accused persons 4, 5, 7 and 11 among the 11 accused persons sped away from the scene and he was followed by P.W. 1 as he was chased by accused 2 and 6 later. That the accused 2 and 6 who were unsuccessfully in catching P.W. 1 also returned to the place of incident. This according to us is the first part of the incident. In the light of the evidence on record, it appears to us that when the accused 1 to 11 have thus committed the offences under Sections 143, 341, 147, 148 and 323 read with Section 149 of the IPC and these offences, the said accused persons have committed having formed themselves into an unlawful assembly. This according to us is the first part of the entire incident.

39. The learned Sessions Judge in para 8 of the impugned judgment had formed the following 8 points to be answered by him. We quote here below the 8 points formulated by the learned Sessions Judge in para 8 of the impugned judgment. The same reads as hereunder:

1. ದಿನಾಂಕ: 15-2-1991 ರಂದು ಶ್ರೀ ಪುಟ್ಟೇಗೌಡ ಇವರು ಬೆನಕನಹಳ್ಳಿ-ಟಿ. ನರಸೀಪುರ ರಸ್ತೆಯ ಮೇಲೆ ಬಲ್ಲಪ್ಪನವರ ಜಮೀನಿನ ಸಮೀಪ ಹಲ್ಲೆಗೆ ಈಡಾಗಿ ಮರಣ ಹೊಂದಿದರು ಎಂದು ರುಜುವಾತಾಗಿದೆಯೇ?

2. ಮಿನಿ ಲಾರಿಯಲ್ಲಿ ಪುಟ್ಟೇಗೌಡ ಇವರು ದಿನಾಂಕ: 15-2-1991 ರಂದು ಬೆನಕನಹಳ್ಳಿಯಿಂದ ಟಿ. ನರಸೀಪುರಕ್ಕೆ ಹೋಗುವಾಗ ದಾರಿಯಲ್ಲಿ 11 ಜನರ ಗುಂಪು ಆ ಲಾರಿಯನ್ನು ಅಕ್ರಮವಾಗಿ ತಡೆಯಿತು ಎಂದು ರುಜುವಾತಾಗಿದೆಯೇ?

3. ಆ ಗುಂಪಿನಲ್ಲಿ ಆರೋಪಿ-4, 5, 7, 9 ಹಾಗೂ 11 ಇದ್ದರು ಹಾಗೂ ಅವರು ಈ ಪುಟ್ಟೇಗೌಡರ ಮೇಲೆ ಹಲ್ಲೆ ಮಾಡಿ ಮರಣಾಂತಿಕವಾಗಿ ಅವರನ್ನು ಗಾಯಗೊಳಿಸಿದರು ಎಂದು ರುಜುವಾತಾಗಿದೆಯೇ?

4. ಆ ಗುಂಪಿನಲ್ಲಿ ಆರೋಪಿ-3 ಇದ್ದರು ಹಾಗೂ ಅವರು ನಂಜುಂಡೇಗೌಡ (ಪಿ.ಡಬ್ಲ್ಯೂ. 6) ಇವರಿಗೆ ಗಾಯ ಮಾಡಿದರು ಎಂದು ರುಜುವಾತಾಗಿದೆಯೇ?

5. ಆ ಗುಂಪಿನಲ್ಲಿ ಆರೋಪಿ-5 ಇದ್ದರು ಹಾಗೂ ಅವರು ಸೌದೆ ಸೀಳಿನಿಂದ ನಂಜುಂಡಿ (ಪಿ.ಡಬ್ಲ್ಯೂ. 2) ಇವರಿಗೆ ಹೊಡೆದು ಗಾಯ ಮಾಡಿದರು ಎಂದು ರುಜುವಾತು ಆಗಿದೆಯೇ?

6. ಆ ಅಕ್ರಮಕೂಟ ದೊಂಬಿ ಮಾಡಿತು ಎಂದು ರುಜುವಾತಾಗಿದೆಯೇ?

7. ಯಾರು ಯಾರು ಆ ಅಕ್ರಮಕೂಟದ ಸದಸ್ಯರು ಎಂದು ಸಿದ್ಧವಾಗಿದೆಯೇ?

8. ಆಪಾದಿಸಲಾದ ಯಾವ ಅಪರಾಧಗಳು ಸಿದ್ಧವಾಗಿವೆ ಹಾಗೂ ಯಾವ ಆರೋಪಿಗಳ ಮೇಲೆ ಅವು ಸಿದ್ಧವಾಗಿವೆ?

40. As we see the second point as formulated by him is to the effect that, whether the prosecution had proved that when the deceased was travelling in the mini lorry on 15-2-1991 from Benakanahalli to T. Narasipura, the 11 accused persons had stopped the mini lorry. It is to be noted here that the said point was answered in the affirmative and various offences committed were also set out in para 9 of the impugned judgment. To quote the answers to the above points 1 to 8 in para 9, the same read as hereunder:

(1) ಅಂಶ ಒಂದು: ಹೌದು

(2)	ಅಂಶ ಎರಡು:	ಹೌದು
(3)	ಅಂಶ ಮೂರು:	ಹೌದು
(4)	ಅಂಶ ನಾಲ್ಕು:	ಇಲ್ಲ
(5)	ಅಂಶ ಐದು:	ಹೌದು
(6)	ಅಂಶ ಆರು:	ಹೌದು
(7)	ಅಂಶ ಏಳು:	ಆರೋಪಿ-4, 5, 7, 9 ಹಾಗೂ 11 ಇವರು ಆ ಅಕ್ರಮ ಕೂಟದ ಸದಸ್ಯರಿದ್ದರೆಂದು ಸಿದ್ಧವಾಗಿದೆ.
(8)	ಅಂಶ ಎಂಟು:	ಕೆಳಗೆ ಕಾಣಿಸಿದ ಆರೋಪಿಗಳು ಅವರ ಮುಂದೆ ಕಾಣಿಸಿದ ಅಪರಾಧಗಳನ್ನು ಮಾಡಿದ್ದಾರೆಂದು ರುಜುವಾತಾಗಿದೆ.
(ಅ)	ಆರೋಪಿ 7 ಹಾಗೂ 11	ಭಾರತ ದಂಡ ಸಂಹಿತೆಯ ಕಲಮು 143, 341 ಹಾಗೂ 302 ಜೊತೆಗೆ ಕಲಮು 149 ಕೆಳಗೆ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧಗಳು.
(ಆ)	ಆರೋಪಿ 7 ಮತ್ತು 11	ಭಾರತ ದಂಡ ಸಂಹಿತೆಯ ಕಲಮು 147ರ ಕೆಳಗೆ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧ.
(ಇ)	ಆರೋಪಿ 4, 5 ಮತ್ತು 9	ಭಾರತ ದಂಡ ಸಂಹಿತೆಯ ಕಲಮು 148ರ ಕೆಳಗೆ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧ.
(ಈ)	ಆರೋಪಿ 5	ಭಾರತ ದಂಡ ಸಂಹಿತೆಯ ಕಲಮು 324ರ ಕೆಳಗೆ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧ.
(ಉ)	ಆರೋಪಿ 4, 7, 9 ಮತ್ತು 11	ಭಾರತ ದಂಡ ಸಂಹಿತೆಯ ಕಲಮು 324ರ ಜೊತೆಗೆ 149ರ ಕೆಳಗೆ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧ.
(ಊ)	ಆರೋಪಿ 4, 5 ಮತ್ತು 9	ಭಾರತ ದಂಡ ಸಂಹಿತೆಯ ಕಲಮು 143, 341 ಹಾಗೂ 302ರ ಕೆಳಗೆ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧಗಳು.
(ಋ)	ಉಳಿದ ಆರೋಪಿಗಳು	ಸಂಶಯದ ಲಾಭದ ಮೇಲೆ ಬಿಡುಗಡೆಗೆ ಅರ್ಹರಾಗಿದ್ದಾರೆ.

41. As stated above the said point 2, the learned Sessions Judge had formulated is referable to all the accused persons and the same was answered in the affirmative by him, but interestingly enough while answering point 7, he had answered the same to say that it is only accused 4, 5, 7, 8 and 11 who were proved to be the members of the unlawful assembly and while discussing the point 2 as above in para 24 of the impugned judgment, the learned Sessions Judge had held that all the 11 accused persons stopped the lorry illegally. To quote para 24 of the impugned judgment, the same read as hereunder:

> 24. ಈ ಸಾಕ್ಷಿದಾರರ ಸಾಕ್ಷ್ಯ ನಂಬಬಾರದು ಹಾಗೂ ಇದೆಲ್ಲಾ ಒಂದು ಕಟ್ಟುಕಥೆ ಎಂಬ ವಾದವನ್ನು ಆರೋಪಿಗಳ ಪರ ಮಾಡಲಾಗಿದೆ. ಈ ಬಗ್ಗೆ ಎಷ್ಟರಮಟ್ಟಿಗೆ ಪಿ.ಡಬ್ಲ್ಯೂ. 6-ನಂಜುಂಡೇಗೌಡ ಹಾಗೂ ಪಿ.ಡಬ್ಲ್ಯೂ. 1-ದೊಳ್ಳೇಗೌಡ ಇವರ ಸಾಕ್ಷ್ಯವನ್ನು ನಂಬಬಹುದು ಅನ್ನುವ ಬಗ್ಗೆ ವಿವರವಾದ ಚರ್ಚೆಯನ್ನು ಅಂಶ-3ರಿಂದ 6 ಚರ್ಚೆ ಮಾಡುವಾಗ ಚರ್ಚಿಸಲಾಗುತ್ತದೆ. ಆದರೆ ಪಿ.ಡಬ್ಲ್ಯೂ. 2-ನಂಜುಂಡಿ, ಪಿ.ಡಬ್ಲ್ಯೂ. 3-ಬಸವರಾಜು ಇವರ ಸಾಕ್ಷ್ಯದಲ್ಲಿ ನಂಬಲು ಅರ್ಹವಾದ ಯಾವ ವಿಷಯ ಕಾಣುವುದಿಲ್ಲವಾದ್ದರಿಂದ, ಇವರು ಸ್ವತಂತ್ರ ಸಾಕ್ಷಿದಾರರಾದ್ದರಿಂದ ಹಾಗೂ ಇವರ ಸಾಕ್ಷ್ಯವನ್ನು ಮಿನಿ ಲಾರಿಯ ಚಾಲಕ ಪಿ.ಡಬ್ಲ್ಯೂ. 7-ಮುಜೀಬುಲ್ಲಾ ಇವರ ಸಾಕ್ಷ್ಯ ಪುಷ್ಟೀಕರಿಸುವುದರಿಂದ, ದಿನಾಂಕ: 15-2-1991 ರಂದು ಮಧ್ಯಾಹ್ನ ಪಿ.ಡಬ್ಲ್ಯೂ. 7 ಓಡಿಸುತ್ತಿದ್ದ ಲಾರಿ ಬೆನಕನಹಳ್ಳಿಯಿಂದ ಟಿ. ನರಸೀಪುರಕ್ಕೆ ಹೋಗುವಾಗ ದಾರಿಯಲ್ಲಿ 11 ಜನರ ಗುಂಪು ಆ್ಯಲೊರಿಯನ್ನು ಅಕ್ರಮವಾಗಿ ತಡೆಯಿತು ಎಂದು ಸ್ಪಷ್ಟವಾಗಿ ಕಂಡುಬರುತ್ತದೆ. ಆದ್ದರಿಂದ ಅಂಶ-2 ಸಂಶಯಾತೀತವಾಗಿ ರುಜುವಾತಾಗಿದೆ ಎಂದು ನಿರ್ಧರಿಸಲಾಗಿದೆ.

42. Further while discussing the offences committed by the different accused persons, in paras 44 and 45 of the impugned judgment, the learned Sessions Judge had observed that the accused persons 1 to 3, 6, 8 and 10 were entitled to the benefit of doubt as it had occurred in the

evidence that accused 3 and 10 had chased 6, accused 2 and 6 had chased P.W. 1 and further that there is no evidence to show that the said accused persons returned and joined the other accused persons and such they have to be given benefit of doubt. It

was further observed therein that accused persons 4, 5, 7, 9 and 11 were present on the scene and further that there is no clear evidence to show that the accused 10 had instigated the assault on the deceased. We feel it proper to quote paras 44 and 45 of the impugned judgment, the same read as hereunder:

44. ಅಭಿಯೋಜನೆಯ ಪ್ರಕಾರ ಈ ಎಲ್ಲಾ 11 ಜನ ಆರೋಪಿಗಳು ಆ ಅಕ್ರಮಕೂಟದ ಸದಸ್ಯರುಗಳು. ಮೊದಲು ಆರೋಪಿ-3 ಲಾರಿ ಹತ್ತಿರ ಬಂದು, ನಂಜುಡೇಗೌಡರನ್ನು ಎಳೆದರು ಹಾಗೂ ಅವರಿಗೆ ಗುದ್ದಿದ ಮೇಲೆ ಓಡಿ ಹೋಗುತ್ತಿದ್ದ ನಂಜುಡೇಗೌಡ ಇವರನ್ನು ಅವನು ಹಾಗೂ ಆರೋಪಿ 10-ಶಿವಮ್ಮಾಮಿ ಅಟ್ಟಿಸಿಕೊಂಡು ಹೋದರು ಎಂದು ಸಾಕ್ಷ್ಯದಲ್ಲಿ ಬಂದಿದೆ. ಆದರೆ ನಂಜುಡೇಗೌಡ ಆ ಘಟನೆಯಲ್ಲಿ ಇದ್ದರು ಅನ್ನುವ ಬಗೆಗೆ ಸಂಶಯ ಉತ್ಪನ್ನವಾಗಿರುವುದರಿಂದ, ಆರೋಪಿ-3 ಮತ್ತು ಆರೋಪಿ-10 ಆ ಅಕ್ರಮಕೂಟದಲ್ಲಿ ಇದ್ದರು ಅನ್ನುವ ಬಗೆಗೆ ಖಚಿತವಾಗಿ ಹೇಳಲು ಸಾಧ್ಯವಿಲ್ಲ. ಪಿ.ಡಬ್ಲ್ಯೂ. 1-ದೊಳ್ಳೇಗೌಡ ಇವರು ಕೆಳಗೆ ಇಳಿದು ಓಡಿ ಹೋದಾಗ ಅವರನ್ನು ಆರೋಪಿ 2-ಶಿವಮಲ್ಲು ಹಾಗೂ ಆರೋಪಿ 6-ಪ್ರಭುಸ್ವಾಮಿ ಅಟ್ಟಿಸಿಕೊಂಡು ಹೋದರು ಎಂದು ಪಿ.ಡಬ್ಲ್ಯೂ. 1 ರಿಂದ 3 ಹೇಳುತ್ತಾರೆ. ಆದರೆ, ಆರೋಪಿ-2 ಮತ್ತು 6 ನಂತರದ ಕೃತ್ಯದಲ್ಲಿ ಭಾಗಿಯಾಗಿರದ ವಿಷಯ ಅವರು ಆ ರೀತಿಯ ಆಕ್ರಮಕೂಟದಲ್ಲಿ ಇದ್ದರೋ, ಇಲ್ಲವೋ ಅನ್ನುವ ಬಗೆಗೆ ಸಂಶಯ ಹುಟ್ಟಿಸುತ್ತಿದ್ದು, ಅವರ ಬಗೆಗೂ ಸಂಶಯದ ಲಾಭವನ್ನು ಕೊಡಬೇಕಾಗುತ್ತದೆ. ಮುಖ್ಯವಾಗಿ ಆರೋಪಿ-1 ಇದೆಲ್ಲ ಘಟನೆಗೂ ಸೂತ್ರಧಾರ ಎಂಬ ಆರೋಪವನ್ನು ಮಾಡಲಾಗಿದ್ದು, ಅವರ ಹೆಸರು ಪ್ರಥಮ ವರ್ತಮಾನ ವರದಿಯಲ್ಲಿ ಪ್ರಮುಖವಾಗಿ ಕಾಣುತ್ತಿದೆ. ಅವರು ತಾಲ್ಲೂಕು ಪಂಚಾಯಿತಿಯ ಸಮಿತಿಯ ಪ್ರಧಾನರು ಎಂದು ಹೇಳಲಾಗಿದ್ದು, ದಿನಾಂಕ: 15-2-1991 ರಂದು ಜರುಗಿದ ಸಭೆಯಲ್ಲಿ ಅವರು ಗೈರು ಹಾಜರಿದ್ದರು ಅನ್ನುವ ಬಗೆಗೆ ನಿಶಾನೆ ಪಿ 30-ಪ್ರಮಾಣ ಪತ್ರವನ್ನು ಹಾಜರ್ಮಾಡಲಾಗಿದೆ. ತಾಲ್ಲೂಕು ಪಂಚಾಯಿತಿಯ ಸಮಿತಿಯ ಸಭೆಗೆ ಅವರು ಹಾಜರಾಗದೇ ಇದ್ದ ವಿಷಯ, ಅವರು ಈ ಘಟನೆ ನಡೆದ ಸ್ಥಳದಲ್ಲಿ ಇದ್ದರು ಎಂದು ತೋರಿಸುವುದಿಲ್ಲ. ಇದನ್ನು ಬಿಟ್ಟರೆ ಹಾಗೂ ಸಾಕ್ಷಿದಾರರ ಹೇಳಿಕೆಯಲ್ಲಿ ಅವರು ಆ ಜಾಗದಲ್ಲಿದ್ದರು ಅನ್ನುವುದನ್ನು ಬಿಟ್ಟರೆ, ಘಟನೆಯಲ್ಲಿ ಅವರ ಯಾವ ಪಾತ್ರ ಕಾಣುತ್ತಿಲ್ಲ. ಆರೋಪಿಗಳ ಹೇಳಿಕೆಯನ್ನು ದಂಡ ಪ್ರಕ್ರಿಯಾ ಸಂಹಿತೆಯ ಕಲಂ 313ರ ಕೆಳಗೆ ತೆಗೆದುಕೊಂಡಾಗ, ಆರೋಪಿ-4 ಇವರು ತಮ್ಮ ಹೇಳಿಕೆಯಲ್ಲಿ,

"ಈ ಆರೋಪಿ 1-ಜಯಶಂಕರ ಇವರು ಮೀಟಿಂಗ್ ಮಾಡಿ ಹುಡುಗರನ್ನೆಲ್ಲಾ ಕರೆಯಿಸಿ, ಒಂದು ಲಕ್ಷ ತೀರಲಿ, ಎರಡು ಲಕ್ಷ ತೀರಲಿ ಲಿಂಗೇಗೌಡರ ಮನೆಯಲ್ಲಿ ಯಾರನ್ನಾದರೂ ತೆಗೆದು ಹಾಕಿಬಿಡಿ ಎಂದು ಹೇಳಿದರು" ಎಂದು ಹೇಳಿವ್ವಾರೆ. ತಾವು ಈ ಘಟನೆಗೆ ವಿನೂ ಸಂಬಂಧ ಇಲ್ಲ ಅದರೆ, ಇದಕ್ಕೆಲ್ಲಾ ಸೂತ್ರಧಾರರು ಆರೋಪಿ 1-ಜಯಶಂಕರ ಎಂದು ಅವರು ಹೇಳುತ್ತಾರೆ. ಅಲ್ಲದೇ, ಆರೋಪಿ-2, 3, 6, 9 ಮತ್ತು 10 ಇವರೂ ಸಹ ಅವರ ಹಿಂಬಾಲಕರು ಅನ್ನುವ ಹೇಳಿಕೆಯನ್ನು ತಮ್ಮ ಹೇಳಿಕೆಯಲ್ಲಿ ಅವರು ಹೇಳಿದ್ದಾರೆ. ಇದನ್ನು ಆಧರಿಸುತ್ತಾ ಮಾನ್ಯ ಸಾರ್ವಜನಿಕ ಅಭಿಯೋಜಕರು ಇದು ಸ್ವತಂತ್ರ ಸಾಕ್ಷ್ಯ ಎಂದು ಅನ್ನದೇ ಇದ್ದರೂ, ಇದು ಪುಷ್ಟೀಕರವಾದ ಸಾಕ್ಷ್ಯವಾಗುತ್ತದೆ ಎಂದು ವಾದಿಸುತ್ತಾರೆ. ಈ ಬಗೆಗೆ ಅವರು ಅಶೋಕ್‌ಕುಮಾರ್ : ವಿರುದ್ಧ: ಡೆಲ್ಲಿ ಆಡಳಿತ (1995 ಸುಪ್ರೀಂಕೋರ್ಟ್ ಕೇಸಸ್ (ಕ್ರಿಮಿನಲ್) 1085 ಇದನ್ನು ಆಧರಿಸಿದ್ದು, ಸಾಂದರ್ಭಿಕ ಸಾಕ್ಷ್ಯಕ್ಕೆ ಸಹ ಆರೋಪಿಗಳ ಹೇಳಿಕೆ ವಿಶ್ವಾಸಾರ್ಹಮಟ್ಟಿಗೆ ಆದರಿಸಬಹುದು ಅನ್ನುವ ವಿಷಯವನ್ನು ಅದರಲ್ಲಿ ಗಮನಿಸಲಾಗಿದೆ. ತಾವು ಘಟನೆ ನಡೆದ ಸ್ಥಳದಲ್ಲಿ ಇದ್ದುದನ್ನು ಆರೋಪಿ-4 ನಿರಾಕರಿಸುವುದರಿಂದ, ಅಲ್ಲಿ ಅವರು ಇರಬಹುದು ಅಥವಾ ಹಿಂದ ಒಮ್ಮೆ ಈ ರೀತಿಯ ಗಲಾಟೆ ಮಾಡಲು ಆರೋಪಿ-1 ಪ್ರಚೋದಿಸಿದ್ದರು ಅನ್ನುವುದನ್ನು ಅಂಗೀಕರಿಸಲು ಸಾಧ್ಯವಿಲ್ಲ. ಆರೋಪಿ 1-ಜಯಶಂಕರ ಇವರು ಇವೆಲ್ಲಾ ಘಟನೆಗಳ ಸೂತ್ರಧಾರರು. ಆದ್ದರಿಂದಲೇ ಹಿಂದ ಇರಬಹುದು ಅನ್ನುವ ಸಂಶಯವನ್ನು ಮಾತ್ರ ಇಂತಹ ಹೇಳಿಕೆ ಮಾಡಬಹುದೇ ವಿನ: ಇದನ್ನು ಈ ಬಗೆಗೆ ಆಧಾರ ಇಲ್ಲ. ಪುಷ್ಟೀಕರವಾದ ವಿಷಯ ಎಂದು ಅನ್ನಲು ಸಾಧ್ಯವಿಲ್ಲ".

45. ಈ ಬಗೆಗೆ ಆರೋಪಿ-4 ಪರ ಮಾನ್ಯ ನ್ಯಾಯವಾದಿಯವರಾದ ಶ್ರೀ ಎ.ಕೆ. ಜೋಶಿ ಇವರು ಮುತ್ತು ನೈಕರ ಮತ್ತು ಇತರರು : ವಿರುದ್ಧ: ತಮಿಳುನಾಡು ಸರ್ಕಾರ (1979 ಸುಪ್ರೀಂಕೋರ್ಟ್ ಕೇಸಸ್ (ಕ್ರಿಮಿನಲ್) 14 ಇದನ್ನು ಆಧರಿಸಿದ್ದು, ವಾಸ್ತವಿದ್ದ ಪಂಗಡಗಳು ಹಳ್ಳಿಯಲ್ಲಿ ಇಂಥದ್ದೊಂದು ಘಟನೆ ಆದಾಗ ಕುತೂಹಲದಿಂದ ಎಷ್ಟೋ ಜನ ಅಲ್ಲಿ ಬರುವುದರಿಂದ, ಅಲ್ಲಿ ಬಂದ ಪ್ರತಿಯೊಬ್ಬರೂ ಅಕ್ರಮ ಕೂಟದ ಸದಸ್ಯರು ಎಂದು ಅನ್ನಲು ಸಾಧ್ಯವಿಲ್ಲ. ಹಾಗೂ ಅವರು ಘಟನೆಯಲ್ಲಿ ಸಕ್ರಿಯಪಾತ್ರವನ್ನು ವಹಿಸಿದ್ದು, ಕೆಂದರೆ ಮಾತ್ರ ಘಟನೆಯಲ್ಲಿ ಆದ ಕೃತ್ಯಗಳಿಗೆ ಅವರನ್ನು ಭಾಗಿಯನ್ನಾಗಿ ಮಾಡಬಹುದು ಅನ್ನುವ ವಾದವನ್ನು ಮಾಡುತ್ತಾರೆ. ಆ ರೀತಿಯ ತತ್ವ ಅದರಲ್ಲಿ ಕಂಡು ಬರುತ್ತಿದ್ದು, ಆದರೆ, ಕೆಳಗಿನ ತತ್ವವನ್ನು ಸಹ ಅದರಲ್ಲಿ ಕಾಣಿಸಲಾಗಿದೆ.

"In a faction ridden society where an occurrence takes place involving rival factions it is but inevitable that the evidence would be of a partisan nature. In such a situation to reject the entire

evidence on the sole ground that it is partisan is to shut one's eyes to the realities of the rural life in our country. Large number of accused would go unpunished if such an easy course is charted. Simultaneously, it is to be borne in mind that in such a situation the easy tendency to involve as many persons of the opposite faction as possible by merely naming them as having been seen, in the melee is a tendency which is more often discernible and is to be eschewed and, therefore, the evidence has to be examined with utmost care and caution. In such a situation Court should apply the working test of being assured about the role attributed to every accused".

ಧರ್ಮಪಾಲ ಹಾಗೂ ಇತರರು : ವಿರುದ್ಧ: ಉತ್ತರಪ್ರದೇಶ ಸರ್ಕಾರ (1975 ಕ್ರಿಮಿನಲ್ ಲಾಜರ್ನಲ್ 1666) ಇದರಲ್ಲಿಯ ತತ್ವವನ್ನು ಆರೋಪಿ-1 ರಿಂದ 3 ಪರ ಮಾನ್ಯ ನ್ಯಾಯಾವಾದಿಯವರಾದ ಶ್ರೀ ಎಸ್. ದ್ವಾರಕನಾಥ್ ಇವರು ಆಧರಿಸಿದ್ದು, ಯಾವುದೇ ಆರೋಪಿ ಅಕ್ರಮಕೂಟದ ಸ್ಥಳದಲ್ಲಿದ್ದ ಬಗೆಗೆ ಸಂಶಯ ಉತ್ಪನ್ನವಾಗುತ್ತಿದ್ದರೆ, ಅದರ ಲಾಭವನ್ನು ಆರೋಪಿಗೆ ಕೊಡಬೇಕು ಹಾಗೂ ಸಾಕ್ಷ್ಯದಲ್ಲಿಯ ಗಟ್ಟಿ ಹಾಗೂ ಜಳ್ಳು ಇವುಗಳನ್ನು ಪ್ರತ್ಯೇಕಿಸುವ ಹೊಣೆ ನ್ಯಾಯಾಲಯದ್ದಿದೆ ಅನ್ನುವ ತತ್ವ ಅದರಲ್ಲಿ ಕಂಡುಬರುತ್ತದೆ. ಈ ತತ್ವಗಳ ಬೆಳಕಿನಲ್ಲಿ ನೋಡಿದಾಗ, ಪ್ರಸ್ತುತ ಪ್ರಕರಣದಲ್ಲಿ ಆರೋಪಿ-4, 5, 7, 9 ಹಾಗೂ 11 ಈ ಅಕ್ರಮಕೂಟದ ಸದಸ್ಯರಿದ್ದದ್ದು, ಹಾಗೂ ಹಲ್ಲೆಯಲ್ಲಿ ಸಕ್ರಿಯ ಭಾಗ ತೆಗೆದುಕೊಂಡದ್ದು ಕಂಡುಬರುತ್ತದೆ. ಆದ್ದರಿಂದ ಈ ಅಕ್ರಮಕೂಟದ ಸದಸ್ಯರು ಅವರು ಇದ್ದರು ಅನ್ನುವ ಬಗೆಗೆ ಸಂಪೂರ್ಣ ರುಜುವಾತು ಇದೆ. ಉಳಿದ ಆರೋಪಿಗಳ ಬಗೆಗೆ ಸ್ಪಷ್ಟವಾದ ಸಾಕ್ಷ್ಯ ಕಾಣದೇ ಇರುವುದರಿಂದ ಅವರೂ ಸಹ ಈ ಅಕ್ರಮಕೂಟದ ಸದಸ್ಯರಿದ್ದರು ಅನ್ನುವುದು ದುಸ್ತರ. 'ಇವನೇ ಕಂಪ್ಲಂಟ್ ಕೊಟ್ಟವನು, ಅವನನ್ನು ಹೊಡೆಯಿರಿ' ಎಂಬ ಪ್ರಚೋದನೆಯನ್ನು ಆರೋಪಿ-10 ಮಾಡಿದ್ದಾರೆ ಎಂದು ಪಿ.ಡಬ್ಲ್ಯೂ. 1, 2 ತಮ್ಮ ಸಾಕ್ಷ್ಯದಲ್ಲಿ ಹೇಳಿದ್ದರೂ ಸಹ ಮುಂದಿನ ಸಕ್ರಿಯಪಾತ್ರ ಇದರಲ್ಲಿ ಕಾಣದೇ ಇದ್ದುದರಿಂದ, ಆ ರೀತಿ ಹೇಳಿದವರು ಸಕ್ರಿಯಪಾತ್ರ ವಹಿಸಿಲ್ಲ ಅನ್ನುವುದನ್ನು ಗಮನಕ್ಕೆ ತೆಗೆದುಕೊಂಡಾಗ, ಆರೋಪಿ-10 ಇವರು ಅಲ್ಲಿದ್ದರು ಅನ್ನುವ ಬಗೆಗೆ ಸ್ವಲ್ಪ ಸಂಶಯ ಬರುತ್ತದೆ. ಆದ್ದರಿಂದ ಆರೋಪಿ-1 ರಿಂದ 3, 6, 8 ಹಾಗೂ 10 ಇವರು ಅಲ್ಲಿದ್ದ ಬಗೆಗೆ ಸಾಕ್ಷಿದಾರರು ಹೇಳಿದ್ದರೂ, ಅವರು ಅಲ್ಲಿದ್ದ ಬಗೆಗೆ ಸಂಶಯಾತೀತವಾದ ಸಾಕ್ಷ್ಯ ಅದು ಅನ್ನಲು ಸಾಧ್ಯವಿಲ್ಲದ್ದರಿಂದ, ಸಂಶಯದ ಲಾಭವನ್ನು ಅವರಿಗೆ ಕೊಡುತ್ತಾ, ಅಲ್ಲಿ ಇದ್ದವರು ಹಾಗೂ ಆಕ್ರಮಣದಲ್ಲಿ ಭಾಗ ತೆಗೆದುಕೊಂಡವರು ಎಂದು ಆರೋಪಿ-4, 5, 7, 9 ಹಾಗೂ 11 ಇವರ ಮೇಲೆ ಸಂಶಯಾತೀತವಾಗಿ ರುಜುವಾತಾಗಿರುವುದರಿಂದ, ಆ ಐದು ಜನ ಆ ದಿನ ಲಾರಿ ತಡೆಗಟ್ಟಿ ಪುಟ್ಟೇಗೌಡರ ಮೇಲೆ ಆಕ್ರಮಣ ಮಾಡಿದ ಅಕ್ರಮಕೂಟದ ಸದಸ್ಯರು ಎಂದು ಸಿದ್ಧವಾಗಿದೆ ಎಂದು ನಾನು ಅಂಶ ಏಳು ಇದನ್ನು ಉತ್ತರಿಸುತ್ತೇನೆ.

43. The above reasonings of the learned Sessions Judge to hold that the above accused persons were not the members of the unlawful assembly is self contradictory, for in answering point 2 he had affirmatively held that all the accused persons did hold up the mini lorry while the deceased was travelling along with his party. Therefore, it is difficult for us to endorse the above reasonings of the learned Sessions Judge to hold that the accused 1 to 3, 6, 8 and 10 were not the members of the unlawful assembly and they were not present on the scene. Therefore, we affirmatively hold that the said accused persons were also the members of the unlawful assembly and all of them had participated in the first part of the incident, thereby committing the offences under Sections 143, 141, 147, 148, 323 read with Section 149 of the IPC.

44. Now we come to the second part of the offence in committing the murder of the deceased, Puttegowda. The learned Sessions Judge while giving the benefit of doubt to the accused 10 had come to the conclusion that he was not a member of the unlawful assembly at all, that finding we have reversed as above. The learned Sessions Judge in para 45 had observed that though there is positive evidence in the evidence of P.Ws.

2 and 3 that the accused 10 had instigated the other accused persons to commit murderous attack on the deceased, Puttegowda, the same cannot be believed, for the said witnesses have since not stated so before the police in their statements recorded by the Investigating Officer-P.W. 26 under. Section 161 of the Cr. P.C. and as such he was entitled to for benefit of doubt. We have carefully gone through the evidence of P.W. 2, P.W. 3 as well as Investigating Officer-P.W. 26 before the learned Sessions Judge. In the evidence of P.W. 26-Investigating Officer he had deposed that both P.Ws. 2 and 3 did not state before whom that accused 10 had instigated for murderous attack on the deceased. But when we see the statement dated 16-2-1991 given by P.W. 2 before P.W. 26-Investigating Officer, we did find that P.W. 2 in his police statement did state in pages (2) and (3) of his statement that accused 10 in fact did such instigation. To quote the said para, the same reads as hereunder:

"ನಂಜುಂಡೇಗೌಡರು ಬಾಗಿಲ ಹತ್ತಿರ ಕೂತಿದ್ದು, ಯಾಕೆ ಲಾರಿ ತಡೀತೀರಿ ಅಂತ ಕೇಳಿದಾಗ ಅಷ್ಟರಲ್ಲಿ ವೀರಭದ್ರಪ್ಪನ ಮಗ ಸ್ವಾಮಿ ಉಃ ಗುರುಸ್ವಾಮಿ, ನಂಜುಂಡೇಗೌಡನನ್ನು ಎಳೆದುಕೊಂಡು ಮುಖ ಮತ್ತು ಮೈಮೇಲೆ ಕೈಯಿಂದ ಹೊಡೆದ. ಅಷ್ಟರಲ್ಲಿ ಲಾರಿ ಡ್ರೈವರ್ ಮುಜೀಬ್ ಹೆದರಿ ಓಡಿ ಹೋದ ನಂಜುಂಡೇಗೌಡನನ್ನು ಶಿವಸ್ವಾಮಿ, ವೀರಭದ್ರಪ್ಪನ ಮಗ ಗುರುಸ್ವಾಮಿ ಓಡಿಸಿಕೊಂಡು ಹೋದರು; ನಂಜುಂಡೇಗೌಡ ಟಿ. ನರಸೀಪುರದ ಕಡೆ ಓಡಿ ಹೋದರು, ದೊಳ್ಳೇಗೌಡನನ್ನು ಪ್ರಭುಸ್ವಾಮಿ ಮತ್ತು ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿ ಶಿವಮಲ್ಲು ಅಟ್ಟಿಸಿಕೊಂಡು ಹೋದಾಗ ಅವನು ತಪ್ಪಿಸಿಕೊಂಡು ಓಡಿ ಹೋದ ಅಷ್ಟರಲ್ಲಿ ಶಿವಸ್ವಾಮಿ, ಎಂಬುವನು ಹಿಡಿದುಕೊಳ್ಳಿರೋ ಸೂಳೆ ಮಕ್ಕಳನ್ನ ಪೋಲೀಸಿಗೆ ಕಂಪ್ಲೇಂಟು ಕೊಟ್ಟಿದ್ದಾರೆ. ಮುಗಿಸಿಬಿಡಿ ಅಂತ ಎಲ್ಲರಿಗೂ ಕೂಗಿ ಹೇಳಿದ".

45. Therefore, it is incorrect to say in the impugned judgment by the learned Sessions Judge that P.W. 2 did not make such a statement before the police, of course, the learned Sessions Judge was right in observing that P.W. 2 did not make such a statement in his statement before the Police as deposed by the Investigating Officer-P.W. 26. Let apart, the presence of accused 10 could not be doubted at all for in cross-examination of P.W. 3 by the Counsel of accused 10, it was suggested to the said witness that accused 10 did not call out any specific name. It is relevant to quote that part of the cross-examination by the Counsel for accused 10. The same is found in para 35 of the evidence of P.W. 3. We quote the same hereunder and the same reads as follows:

35. ಪುಟ್ಟೇಗೌಡರು ಕೆಳಗೆ ಇಳಿಯುವ ಮೊದಲು ಯಾರೂ ಕೂಗುವುದು ಚೀರುವುದು ಮಾಡಲಿಲ್ಲ. ಆರೋಪಿ 10-ಶಿವಸ್ವಾಮಿ,'ಹಿಡಿದುಕೊಳ್ಳಿರೋ ಪೋಲೀಸರಿಗೆ ಕಂಪ್ಲೇಂಟ್ ಕೊಟ್ಟಿದ್ದಾರೆ, ಮುಗಿಸಿಬಿಡಿ' ಎಂದು ಎಲ್ಲರಿಗೂ ಕೂಗಿ ಹೇಳಿದ ಎಂದು ನಾನು ಪೋಲೀಸರ ಮುಂದೆ ಹೇಳಿದ್ದೇನೆ, ಇಂತಹವರನ್ನೇ ಹಿಡಿದುಕೊಳ್ಳಿ ಎಂದು ಶಿವಸ್ವಾಮಿ ಹೆಸರು ಹಿಡಿದು ಹೇಳಲಿಲ್ಲ. ಆ ರೀತಿ ಶಿವಸ್ವಾಮಿ ಕೂಗುವುದಕ್ಕಿಂತ ಮೊದಲೇ ನಂಜುಂಡೇಗೌಡರಿಗೆ ಏಟು ಬಿದ್ದಿತ್ತು. ನಂಜುಂಡಿ ಇವನಿಗೆ ಆರೋಪಿ-5 ಹೊಡೆದ ಮೇಲೆ ಆರೋಪಿ 10-ಶಿವಸ್ವಾಮಿ ಕೂಗಿ ಹೇಳಿದ್ದು. ಶಿವಸ್ವಾಮಿ ಕೂಗಿ ಹೇಳಿದ ಆಗ ನಂಜುಂಡಿ ಇವನಿಗೆ ಆರೋಪಿ-5 ಮೈಕ್ಕೆಗೆ ಹೊಡೆದ ಎಂದು ನಾನು ಪೋಲೀಸರ ಮುಂದೆ ಹೇಳಿಲ್ಲ.

46. That being the evidence on record, it could not be said that the accused 10 was not a member of the unlawful assembly and he had not instigated the murderous attack on the deceased, Puttegowda.

47. It is in the evidence both of P.W. 2 as well as P.W. 3 that it is the accused 10 on sighting the deceased on the road while intervening the assault of P.W. 2 by P.W. 5 by MO 1-firewood stick, had uttered that it is he who lodged the complaint the day earlier and he had to be done away with. In the evidence of P.W. 2, he had stated to that effect as follows:

"ನಾನು ಲಾರಿಯಿಂದ ಇಳಿಯುವಾಗ ಆರೋಪಿ 5-ಸುರೇಶ ಸೌದೇ ಸೀಳಿನಿಂದ ನನ್ನ ಎಡಕಾಲು, ಎಡಕ್ಕೆ, ಬಲತೊಡೆಗೆ ಹೊಡೆದ. ಆಗ ತಡೆಯಲು ಬಂದ ಪುಟ್ಟೇಗೌಡರಿಗೆ ಸುರೇಶ ಸೌದೇ ಸೀಳಿಂದ ಒಂದೇಟು ಹೊಡೆದ ಹಿಡಿದುಕೊಳ್ಳಿ, ಇವನನ್ನು ಇವನು ಕಂಪ್ಲೇಂಟ್ ಕೊಟ್ಟಿದ್ದಾನೆ ಆತನನ್ನು ಮುಗಿಸಿಬಿಡೋಣ ಎಂದು ಅಲ್ಲಿಗೆ ಬಂದ ಶಿವಸ್ವಾಮಿ (ಆರೋಪಿ-10) ಅಂದರು. ಆಗ ಆರೋಪಿ 7-ಶಿವಮೂರ್ತಿ, ಆರೋಪಿ 11-ಬಸವರಾಜು, ಪುಟ್ಟೇಗೌಡನನ್ನು ಹಿಡಿದುಕೊಂಡರು. ಸುರೇಶ ಹಾಗೂ ಮಹಾಲಿಂಗು (ಆರೋಪಿ-5 ಹಾಗೂ 4) ತಮ್ಮ ಕೈಲಿದ್ದ ಕಲ್ಲುಗಳಿಂದ ಪುಟ್ಟೇಗೌಡರ ತಲೆಮೇಲೆ ಹೊಡೆದರು. ಆರೋಪಿ 5-ಸುರೇಶ ನನ್ನನ್ನು ಹೊಡೆದಾಗ ಅವನ ಹತ್ತಿರ ಸೌದೆ ಸೀಳು ಇತ್ತು, ಅದನ್ನು ಬಿಸಾಕಿ ಒಂದು ಕಲ್ಲು ತೆಗೆದುಕೊಂಡು ಪುಟ್ಟೇಗೌಡರ ತಲೆ ಮೇಲೆ ಹೊಡೆದರು. ಆಗ ಪುಟ್ಟೇಗೌಡ ಕೆಳಗಡೆ ಬಿದ್ದನು. ಆಗ ಆರೋಪಿ 9-ಪರಶಿವಮೂರ್ತಿ ಒಂದು ದೊಡ್ಡಕಲ್ಲು ತೆಗೆದುಕೊಂಡು ಅವನ ತಲೆಗೆ ಎತ್ತಿ ಬೆಗೆದರು. ಅದು ಪುಟ್ಟೇಗೌಡನ ಎಡಕಿವಿಗೆ ಬಡಿಯಿತು ಪುಟ್ಟೇಗೌಡನ ಮೂಗು, ಬಾಯಿಯಲ್ಲಿ ರಕ್ತ ಬಂದಿತು ಅವನು ಸತ್ತುಹೋಗಿ ಬಿಟ್ಟ ಎಂದು ಎಲ್ಲಾ ಆರೋಪಿಗಳು ಅಲ್ಲಿಂದ ಓಡಿಬಿಟ್ಟರು".

48. In the like way, P.W. 3 in his evidence to the above effect stated as follows:

"ತನ್ನ ಕೈಲಿದ್ದ ಸೌದೇಸೀಳಿನಿಂದ ಆರೋಪಿ 5-ಸುರೇಶ ಅವನಿಗೆ ಹೊಡೆದ ಆಗ ಪುಟ್ಟೇಗೌಡ ಬಂದು ಅವನಿಗೆ ಅಡ್ಡಗಟ್ಟಿದ "ಹಿಡಿದುಕೊಳ್ಳಿ ಇವನನ್ನು ನಿನ್ನೆ ಕಂಪ್ಲೇಂಟ್ ಕೊಟ್ಟಿದ್ದಾರೆ, ಇವನನ್ನು ಯಾರೂ ಕೊಲೆ ಮಾಡುವುದಿಲ್ಲವೇ" ಎಂದು ಆರೋಪಿ 10-ಶಿವಸ್ವಾಮಿ ಅಂದನು. ಆಗ ಆರೋಪಿ 7-ಶಿವಮೂರ್ತಿ ಹಾಗೂ ಆರೋಪಿ 11-ಬಸವರಾಜು ಪುಟ್ಟೇಗೌಡನನ್ನು ಹಿಡಿದುಕೊಂಡರು ತನ್ನ ಕೈಲಿದ್ದ ಸೌದೇಸೀಳನ್ನು ಆರೋಪಿ 5-ಸುರೇಶ ಬಿಸಾಕಿದನು ಹಾಗೂ ಒಂದು ಕಲ್ಲನ್ನು ತೆಗೆದುಕೊಂಡು ಪುಟ್ಟೇಗೌಡನ ತಲೆಗೆ ಆರೋಪಿ 5-ಸುರೇಶ ಹೊಡೆದನು. ಆರೋಪಿ 4-ಮಹಾಲಿಂಗೂ ಸಹಾ ತನ್ನ ಕೈಲಿದ್ದ ಕಲ್ಲಿನಿಂದ ಪುಟ್ಟೇಗೌಡನಿಗೆ ತಲೆಗೆ ಹೊಡೆದನು. ಆ ಹೊಡೆತಕ್ಕೆ ಪುಟ್ಟೇಗೌಡ ಕೆಳಗೆ ಬಿದ್ದರು. ಆವಾಗ ಆರೋಪಿ 9-ಪರಶಿವಮೂರ್ತಿ ಒಂದು ದೊಡ್ಡ ಕಲ್ಲನ್ನು ಎತ್ತಿಕೊಂಡು ಪುಟ್ಟೇಗೌಡರ ಕಡೆಗೆ ಒಗೆದ, ಅದು ಪುಟ್ಟೇಗೌಡರ ಎಡಕಿವಿಗೆ ಬಿದ್ದಿತು. ಪುಟ್ಟೇಗೌಡನ ಮೇಲೆ ಕಲ್ಲು ಹಾಕಿದವರೆಲ್ಲಾ ಓಡಿಬಿಟ್ಟರು".

49. Therefore, from the above evidence on record, it is crystal clear that the second incident of murderous attack on the deceased was, in fact, due to the instigation by accused 10 and it is thereafter, accused 4 and 5 had assaulted the deceased by MOs. 3 and 4-small stones on the both sides of his rear head while accused 7 and 11 specifically held the deceased from both sides and on his fall on the ground with bleeding injuries on the rear side of his head, the accused 9 had thrown MO 2-big stone hitting the deceased on the head (by the side of his left ear of the deceased). Therefore, in our considered view, the second part of the incident of murderous attack was by the accused 4, 5, 7, 9 and 11 with the instigation of accused 10. Therefore, the second part of the murderous act was only by accused 4, 5, 7, 9 to 11 and by none others. As such, the said accused persons were also guilty of the offences under Sections 324 and 302 read with Section 149 of the IPC besides they being guilty of the other offences committed by them along with the rest of the accused persons participating in the first part of the offence. To clarify further in this regard, the second set of accused persons had participated in the entire incident in two parts *i.e.* the first and second parts and as we have analysed the whole episode as above and according to us, they are guilty of the offences under Sections 143, 341, 147, 148, 323 read with Section 149 of the IPC on the one part and Sections 324 and 302 read with Section 149 of the IPC on the second.

50. Regarding Point No. (iii):

51. Therefore, we hold that, when the accused 1 to 3, 6 and 8 were guilty of the offences under Sections 143, 341, 147, 148, 323 read with Section

149 of the IPC, the accused 10 was guilty of the offences under Sections 143, 341, 147, 148, 323, read with Section 149 of the IPC and further guilty of the offences under Sections 324 and 302 read with Section 149 of the IPC and we accordingly hereby convict them *i.e.* accused 1 to 3, 6, 8 and 10 for the said offences committed by them.

52. In the result, when the first two appeals are dismissed in confirming the impugned judgment and order of conviction passed by the learned Sessions Judge as against the accused 4, 5, 7, 9 and 11, the third appeal filed by the appellant-State stands allowed in setting aside the impugned judgment and order of acquittal as against the accused 1 to 3, 6, 8 and 10 and further convicting all of them for various offences we held them guilty as above.

53. Having held as above, we propose to hear their Counsel, Sri Mahanthesh S. Hosmath in the matter of imposition of sentences on each of them.

ORDER ON SENTENCE

54. Now we come to the sentence part to the accused 1 to 3, 6, 8 and 10. In this regard, we have also heard their learned Counsel. It was argued by Sri Hosmath that this Court has to be lenient in the matter of sentencing the said accused persons. The

reasons he had assigned are, firstly that they are all poor agriculturists living hand to mouth and secondly that, at no point of time they were involved in any criminal case or cases and at no point of time they had suffered any sentence or conviction in any criminal case. He had also argued that in the said facts and circumstances, this Court be pleased to extend the benefit of Probation of Offenders Act, 1958.

55. We have carefully considered the argument of Sri Hosmath on the point of award of sentence to the above said accused persons. He had mainly pleaded that the accused persons be let on probation for maintaining good conduct under the Probation of Offenders Act, probably he had pleaded that only in respect of accused 1 to 3, 6 and 8 for the accused 10 having suffered conviction and sentence under Section 302 of the IPC, the question of application of the Probation of Offenders Act to him does not arise at all. Hence, we take it that the pleading of application of the Probation of Offenders Act is only in respect of the said accused persons.

56. On the other side, the learned Government Pleader appearing for the appellant-State in the third appeal argued that it is not a fit case to apply the Probation of Offenders Act. According to him, all the accused persons and others were involved in a serious case wherein innocent life was taken away.

57. We have considered the arguments advanced by the both sides. As argued by the learned Government Pleader that all these accused persons were involved in a serious case in which one Puttegowda was murdered. The above said accused *i.e.* accused 1 to 3, 6 and 8 would have also suffered life imprisonment, had we not treated whole incident in

two parts as we discussed in detail in the judgment. Therefore, we have to state that the argument of Sri Hosmath did not appeal to our judicial conscience, for the reason that all of them in a way were involved in a murder case wherein the above said youngster was put to death in a cruel way by pelting of stones, two small and one big; of course we did not hold them guilty of the offence under Section 302 of the IPC read with Section 149 of the IPC. That we did not, for certain peculiar circumstances of the case we have appreciated. Strictly speaking they have to be thankful for they being not bracketed along with others who had suffered life imprisonment in a case. As a matter of fact all of them and others, in all 11 accused persons in the case were commonly charged for various offences including the offence under Section 302 read with Section 149 of the IPC by the learned Sessions Judge. Let them be satisfied that they were treated differentially by our approach to the case differentially. So much is so good to them, we are but to add in this context.

58. Therefore, we are not inclined to exercise our discretion to apply the Probation of Offenders Act, in respect of the said accused 1 to 3, 6 and 8. Nevertheless, we are live to reckon the situation that, we have reversed the judgment and order of acquittal as against all of them as well as accused 10 and that, they had the benefit of the order of acquittal in the hands of the Trial Court for about six years since. Therefore, we are convinced to be lenient in the matter of award of sentences to each of them.

59. Incidentally, Sri Hosmath also brought to our notice that the accused 1 was in custody for 3 months 6 days as he was arrested on 18-2-1991 and subsequently enlarged on bail on 22-5-1991.

60. We therefore award the sentences as against the said accused persons as hereunder:

61. As against the accused 1 to 3, 6 and 8:

1. For the offence under Section 143 of the IPC: S.I. for two months.
2. For the offence under Section 147 of the IPC: S.I. for six months.
3. For the offence under Section 148 of the IPC: R.I. for six months.
4. For the offence under Section 323 of the IPC: S.I. for three months.
5. For the offence under Section 341 of the IPC: S.I. for 15 days.

62. As against the accused 10:

1. For the offence under Section 143 of the IPC: S.I. for two months.
2. For the offence under Section 147 of the IPC: S.I. for six months.
3. For the offence under Section 148 of the IPC: R.I. for six months.

4. For the offence under Section 323 of the IPC: R.I. for three months.
5. For the offence under Section 324 of the IPC: S.I. for one month.
6. For the offence under Section 341 of the IPC: S.I. for 15 days.
7. For the offence under Section 302 of the IPC: Imprisonment for life.

63. We also direct that all the substantial sentences awarded as against all the accused 1 to 3, 6, 8 and 10 as above shall run concurrently. They are also entitled to for set off under Section 428 of the Cr. P.C. Their Bail Bonds hereby stand cancelled.

64. Let the said accused 1 to 3, 6, 8 and 10 now be taken to the custody to serve out the above sentences imposed on them.

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1. (1984) 4 SCC 116 : AIR 1984 SC 1622.
2. 1981 Supp SCC 1 : AIR 1981 SC 1223.
3. AIR 1994 SC 549.
4. 1981 Supp SCC 43 : AIR 1981 SC 1230.
5. (1981) 2 SCC 60 : AIR 1981 SC 942 : 1981 Cri. L.J. 484.
6. (1977) (2) Kar. L.J. 13.
7. 1998 (3) Supreme 2.
8. (1974) 4 SCC 471 : AIR 1974 SC 753.
9. (1972) 4 SCC (N) 6 : AIR 1972 SC 110.
10. 1989 Cri. L.J. 1709.
11. (1976) 1 SCC 442 : AIR 1976 SC 560.
12. (1971) 3 SCC 466 : AIR 1971 SC 1554.
13. (1996) 10 SCC 236 : AIR 1996 SC 3490 : 1996 (6) Supreme 649.
14. (1976) 4 SCC 441 : AIR 1977 SC 381.
15. (1981) 2 SCC 752 : AIR 1981 SC 1390.
16. (1981) 2 SCC 1 : AIR 1981 SC 697.
17. (1985) 1 SCC 505 : AIR 1985 SC 48.
18. (1981) 3 SCC 720 : AIR 1981 SC 1227.

[19] 1977 Cri. L.J. 642.

[20] (1989) 1 SCC 437 : AIR 1989 SC 754.

[21] 1980 Supp SCC 224 : AIR 1980 SC 879.

[22] (1976) 3 SCC 478 : AIR 1977 SC 349.

[23] 1980 Cri. L.J. NOC 99.