

Kenchanagoudra vs The State Of Karnataka on 17 March, 2022

Author: Suraj Govindaraj

Bench: Suraj Govindaraj

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 17TH DAY OF MARCH, 2022

PRESENT

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ
AND
THE HON'BLE MS. JUSTICE J.M.KHAZI

CrI.A. No.100106/2016

BETWEEN

1. KENCHANAGAUDRA
BASAVARAJAPPA @ BASAPPA
S/O VIRUPAKSHAPPA,
AGE: 54 YEARS,
OCC: AGRICULTURE,
2. GIRISH S/O KENCHANAGAUDRA BASAPPA
AGE: 28 YEARS,
OCC: AGRICULTURE,
3. KANTESH
S/O KENCHANAGAUDRA BASAPPA
AGE: 26 YEARS,
OCC: AGRICULTURE,
4. KARIYAPPA S/O VIRUPAKSHAPPA,
AGE: 44 YEARS,
OCC: AGRICULTURE,
5. RUDRAPPA S/O VIRUPAKSHAPPA,
AGE: 45 YEARS,
OCC: AGRICULTURE,
6. RAMESH S/O VIRUPAKSHAPPA,
AGE: 36 YEARS,

CrI.A. No.100106/2016

OCC: AGRICULTURE,
ALL ARE R/O: HOLALU VILLAGE,
TQ: HADAGALI,
DISTRICT: BALLARI.

...APPELLANTS

(BY SRI.K L PATIL, ADVOCATE)

AND

THE STATE OF KARNATAKA,
THROUGH ITTAGI PS,
HADAGALI CIRCLE,
BALLARI
REP BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH.

...RESPONDENT

(BY SRI.V.M.BANAKAR, ADDL SPP.)

THIS CRIMINAL APPEAL IS FILED U/SEC.374(2) OF CR.P.C.,
PRAYING TO CALL FOR THE RECORDS IN SC NO.89/2011 ON THE
FILE OF HON'BLE III ADDL. DIST. & SESSIONS JUDGE, BALLARI
SITTING AT HOSAPETE AND TO ALLOW THIS CRIMINAL APPEAL BY
SETTING ASIDE THE JUDGMENT AND ORDER OF CONVICTION
DATED 28/3/2016 AND ORDER OF SENTENCE DATED 1/4/2016
PASSED BY THE III ADDL. DIST. & SESSIONS JUDGE, BALLARI,
SITT, G AT HOSAPETE IN SC NO.89/2011 FOR THE OFFENCES
PUNISHABLE UNDER SECTIONS 148, 448, 302, 307 R/W 149 OF
IPC AND ACQUIT THE APPELLANT OF THE OFFENCES PUNISHABLE
UNDER SECTIONS 148, 448, 302, 307 R/W 149 OF IPC.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND
RESERVED FOR JUDGMENT, COMING UP FOR 'PRONOUNCEMENT
OF JUDGMENT', THIS DAY, SURAJ GOVINDARAJ J.,
DELIVERED THE FOLLOWING:

CrI.A. No.100106/2016

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JUDGMENT

1. The appellants are before this Court challenging the judgment of conviction and order of sentence passed by the III Additional District and Sessions Judge, Ballari sitting at Hosapete (for brevity, 'trial Court') in S.C.No.89/2011 dated 28.03.2016.

2. By way of the said judgment, the appellants/accused were convicted of the offences punishable under Sections 148, 448, 302 read with Section 149 of the Indian Penal code (for brevity, 'IPC') and they were acquitted for the offences punishable under Sections 143, 147, 504, 324, 326, 323, 506

read with Section 149 of IPC and sentenced to undergo simple imprisonment for one year with fine of Rs.500/- each, in default thereof to undergo simple imprisonment for 10 days for offence under Section 148 of IPC; to undergo simple imprisonment for six months with fine of Rs.500/- each, in default thereof to undergo simple imprisonment for 10 days for offence under Section 448; to undergo life imprisonment with fine of Rs.10,000/- each, in default thereof to undergo simple imprisonment for one year for offence under Section 302; to undergo simple imprisonment for five years with fine of Rs.5,000/- each, in default thereof to undergo simple imprisonment for six months for offence under Section 307 of IPC; The accused entitled for set off of the earlier period of detention. A sum of Rs.50,000/- was ordered to be given to the family of the deceased Kamaraj @ Honnappa as compensation under Section 357(A) of Cr.P.C.

3. The case of the prosecution is that:

3.1. On 25.07.2010, at about 7.00 p.m. in front of milk dairy of Holalu village, there was a quarrel between PW.13/CW.17-Eshwara Gouda and accused No.3-Kantesh and accused No.1-Kenchanagoudra Basavarajappa the accused for mixing water in the milk.

3.2. Thereafter, at around 12.00 mid night on the same day, all the accused with a common object of eliminating the said PW.13/CW.17-

Eashwargouda and his henchmen, formed an unlawful assembly in front of the house of the complainant PW.4/CW.1-Kadlenni Basappa, committed rioting by holding sticks, stones, axe, abused them in indecent words, insulted them and provoked them to break the public peace, threatened them with life and criminally trespassed into the house of PW.4/CW.1-Kadlenni Basappa.

3.3. PW.7/CW.11-Manjappa was dragged from his bedroom to the drawing room and accused No.2-Girish tried to assault him on his head with an axe and caused injuries on his left hand when he tried to avoid the said blow. Accused No.4-Kariyappa assaulted him with handle of axe and inflicted teeth bite injury on his left chest. Accused No.4-Kariyappa assaulted PW.8/CW.12-Veerappa with stick and inflicted bleeding injury. Accused No.1- Kenchanagoudra Basavarajappa abetted to commit the murder of deceased Kamaraj @ Honnappa, who had come along with PW.11/CW.13-Lakappa, PW.12/CW.14- Basavaraj, CW.15-Nagaraj. CW.16-Basavarajappa and accused No.6-Ramesh pushed PW.12/CW.14-Basavaraja to the ground and assaulted with stick on right leg. Further, accused No.3-Kantesh assaulted the deceased Kamaraj @ Honnappa with axe on his head and at that time when PW.11/CW.13-Lakkappa came to rescue the deceased, accused No.2-Girish and accused No.3-Kantesh grabbed him, while accused No.5-Rudrappa assaulted him with a stone. Further, accused No.4-Kariyappa assaulted the said PW.11/CW.13-Lakappa's left leg with stick and accused No.3-Kantesh inflicted teeth bite injuries on his right forearm and attempted to commit their murder and left the spot.

3.4. Thereafter, the deceased Kamaraj @ Honnappa along with PW.11/CW.13-Lakappa and other injured were taken in an ambulance to the Government Hospital, Hadagali. PW.11/CW.13-Lakappa

shifted the deceased Kamaraj @ Honnappa to City Central Hospital, Davanagere and said deceased Kamaraj @ Honnappa died on 01.08.2010 at 2.20 p.m. due to the said injuries. The accused had inflicted grievous injuries to PW.7/CW.11-Manjappa and simple injuries to PW.8/CW.12-Veeranna, PW.11/CW.13-Lakappa, PW.12/CW.14- Basavaraj and thereby have committed the aforesaid offences.

4. It is on that basis that the complainant PW.4/CW.1-Kadlenni Basappa filed a complaint before PW.20/CW.32-Shadakshari Patil, ASI of Police, Holalu on 26.07.2010 at 1.00 a.m in the night. When he sent the said complaint through P.C.298 to Hire Hadagali Police Station, on receipt, PW.21/CW.33-D.Hanumanthappa, PSI of Hire Hadagali Police Station had registered the complaint in Crime No.41/2010 for the offences under Sections 143, 147, 148, 324 448, 504 506 read with Section 149 of IPC and sent the FIR to the jurisdictional Magistrate through PW.19/CW.29-Manjunatha.

5. On being informed about the death of Kamaraj @ Honnappa on 01.08.2010, he addressed a requisition for addition of offence under Section 302 of IPC to the Magistrate and considering that the offence now to be dealt with was one under Section 302. Further investigation was handed over to PW.22/CW.34-Prakash Rathod, CPI, who upon investigation, submitted a charge sheet against the accused showing accused Nos.1 to 6 as absconding.

6. The Committal Court took cognizance of the offences. Since the accused earlier had been released on bail, their presence was secured, a copy of the charge sheet along with documents are furnished to them. On hearing both sides, the matter was committed to the Principal District and Sessions Judge, Ballari, who made it over to Fast Track Court-III, Hosapete, which was subsequently transferred to the III Additional District and Sessions Judge, Ballari sitting at Hosapete. The accused entered appearance through their advocate. After hearing both sides, charges were framed, read over and explained to the accused in a language known to them i.e. Kannada. The accused pleaded not guilty and claimed to be tried.

7. During the course of trial, the prosecution examined in all 24 witnesses (PWs.1 to 24), got marked 16 documents (Exs.P.1 to P.16) and 8 material objects (MOs.1 to 8) in support of its case.

8. After closure of the side of the prosecution, the evidence as against the accused was put across to them, they denied the same, however they did not lead any evidence. After hearing both sides the trial Court passed the impugned judgment of conviction and order of sentence, which is under appeal.

9. Sri.K.L.Patil, learned counsel appearing for the appellants/accused submits as under:

9.1. There are several inconsistencies in the events as narrated by the complainant, as such the evidence of the complainant ought to have been discarded. There is no clear and clinching evidence regarding the incident alleged to have taken place in the evening as also in the night. The prosecution has been unable to prove beyond reasonable doubt the guilt of the accused. The order of conviction is passed entirely

on the basis of the interested witnesses who are relatives of the deceased.

9.2. The prosecution has failed to prove the genesis of the incident by relying on cogent and reliable evidence. Therefore, the conviction order passed by the trial court is contrary to the material placed on record. 9.3. The prosecution has not examined any independent witnesses. As such, the evidence of all interested witnesses is required to be discarded and if so discarded, there would be no evidence available on record to impute any blame on the accused.

9.4. The prosecution case as regards the occurrence of the incident is in a different manner, while the incident occurred in a different manner. The motive being attributed is the incident which occurred in the evening, in front of the milk dairy. The prosecution has failed to prove the motive. There is delay in filing of the FIR. More so, there is a delay in the FIR being received by the Magistrate inasmuch as the FIR was registered at 3.00 am on 26.7.2010 but was received by the Magistrate at 6.00 pm on 26.07.2010. 9.5. Though the allegation is that the incident occurred inside the house of PW.4/CW.1-

Kadlenni Basappa, there are no bloodstains in the said house as per the spot panchanama. There were no scientific examinations conducted in the said house, to establish if the incident had occurred in the house of PW.4/CW.1-Kadlenni Basappa as alleged. He submits that the incident occurred on the road in front of the house of PW.4/CW.1- Kadlenni Basappa and not inside the house of PW.4/CW.1-Kadlenni Basappa.

9.6. The incident actually occurred at 10.30 p.m. on the road leading to the grain trashing yard near the house of the complainant. There is no incident which had occurred at 12.00 midnight. There is existence of case and counter case of the same incident which occurred at the same time as regards which a different interpretation is sought to be given by the complainant.

9.7. The medical evidence regarding the deceased is very suspicious inasmuch as Ex.P.7-wound certificate was issued at 11.00 p.m. by PW.16/CW.26-Dr.Raju wherein it is stated that the deceased was assaulted in his house. By referring to Ex.P.6 he submits that it being the wound certificate of PW.7/CW.11 Manjappa the same also indicates that the incident occurred at 11.00 p.m. As per Ex.P.7 there was a sutured wound measuring 7x1 c.m., whereas in terms of Ex.P.9-postmortem report the wound is stated to be 15 inches sutured wound.

9.8. By referring to the evidence on record, he states that there is only one incident that has occurred, that is at 10.30 p.m. There is no evidence on record to establish the incident at 12.00 midnight. By referring to Ex.P.3- Complaint, he submits that there is interpolation in the complaint inasmuch as there is insertion of the word 'Kodli' and alteration of time to '3.00 a.m.' By referring to Ex.P.1-spot panchanama, he submits that assault was by handle of the 'Kodli' and sticks on 26.07.2010 between 2.00-2.45 a.m. Though police were at the site, no panchanama was drawn.

9.9. Though allegations are made that the door is broken and or the latch is broken, there is no evidence led in regard thereto. No details as regards any bloodstains on the floor or the walls of the house of PW.4/CW.1-Kadlenni Basappa has been produced. Furthermore, no photographs have been taken inside the house of PW.4/CW.1-Kadlenni Basappa, thereby indicating that the entire story or the event having occurred in the house of PW.4/CW.1-Kadlenni Basappa to be completely false.

9.10. There are material inconsistencies between the complaint and the evidence of PW.4/CW.1-Kadlenni Basappa inasmuch as in the complaint it is not mentioned which of the overt acts were committed by whom. The case of the prosecution is sought to be supported by such inconsistencies. Though the FIR is stated to be dispatched on 26.07.2010 at 7.00 a.m., it has reached the Court only at 6.10 p.m. Therefore, he submits that the complaint has been manipulated and modulated to suit the requirements of the complainant. 9.11. Though the complaint was filed on 25.07.2010, the statements of the accused as also the complainants were not recorded until 30.07.2010. There is no explanation which has been given for such an inordinate delay. The deceased expired on 01.08.2010. No attempt was made to record his statement during the time that he was in hospital. 9.12. In support of his above contentions, he relies on the following decisions:

i. Hem Raj and Others vs. State of Haryana

9. The fact that no independent witness -

though available, was examined and not even an explanation was sought to be given for not examining such witness is a serious infirmity in the prosecution case having regard to the indisputable facts of this case. Amongst the independent witnesses, Kapur Singh was one, who was very much in the know of things from the beginning. Kapur Singh is alleged to have been in the company of PW5 at a sweet stall and both of them after hearing the cries joined PW4 at Channi Chowk. He was one of those who kept the deceased on a cot and took the deceased to hospital. He was there in the hospital by the time the first I.O.-PW9 went to the hospital. The evidence of the first I.O. reveals that the place of occurrence was pointed out to him by Kapur Singh. His statement was also recorded, though not immediately but later. The I.O. admitted that Kapur Singh was the eye-witness to the occurrence. In the FIR, he is referred to as the eye-witness along with PW5. Kapur Singh was present in the Court on 6.10.1997. The Addl. Public Prosecutor 'gave up' the examination of this witness stating that it was unnecessary. The trial court commented that he was won over by the accused and therefore he was not examined. There is no factual basis for this comment. The approach of the High Court is different. The High Court commented that his examination would only amount to 'proliferation' of direct evidence. But, we are unable to endorse this view of the High Court. To put a seal of approval on the prosecution's omission to examine a material witness who is unrelated to the deceased and who is supposed to know every detail of the incident on the ground of 'proliferation' of direct evidence is not a correct approach. The corroboration of the testimony of the related witnesses-PWs 4 & 5 by a known independent eye-witness could have strengthened the prosecution case, especially when the incident took place in a public place.

10. One more aspect which deserves notice is that at the alleged scene of offence, no bloodstains were found by the IO, though he made a search. The surmise of the High Court that the bloodstains at the public place would have disappeared in view of the time gap between the incident and the IO's inspection may not be correct, especially, in view of the fact that it is a metal road, as shown by PW 8 in the site plan and it was night-time. It is difficult to believe that traces of blood would fade out by the time of the visit of IO. This is one of the circumstances that has to be kept in mind while appreciating the prosecution case.

ii. Shivasharanappa vs. State of Karnataka (AIR 2013 SC 2144 - para 17 to 20

17. The trustworthiness of the version of PWs 7 and 9 is to be tested on the aforesaid touchstone and it is to be seen whether the other circumstances do support the prosecution case or to put it differently, whether the evidence brought on record proves the guilt of the accused persons beyond reasonable doubt. PW 9, the daughter of the deceased, has testified to have witnessed the appellant-accused being exhorted by her paternal grandmother Ningawwa, who had trespassed into the house and forcibly took out her mother. She had, as is reflected, immediately rushed to the house of her maternal grandmother and disclosed it to her. It has been elicited in the cross-examination that her maternal grandmother was staying with her another married daughter and both the daughter and son-in-law were at home. She did not choose it appropriate to inform them about the incident. It is manifest, the grandmother, PW 7, came with her granddaughter, PW 9, to the house of the deceased and tried to search for her. Despite the search becoming a Sisyphean endeavour and non-effective, she chose to remain silent and did not inform anyone. The High Court has accepted the version of these two witnesses on two counts, namely, that the daughter was threatened and both of them were in a state of fear. The learned trial Judge, on the contrary, had found the aforesaid conduct of both the witnesses to be highly unnatural. In *Gopal Singh v. State of M.P.* [(2010) 6 SCC 407 : (2010) 3 SCC (Cri) 150] this Court did not agree with the High Court which had accepted the statement of an alleged eyewitness as his conduct was unnatural and while so holding, it observed as follows: (SCC p. 413, para 25) "25. We also find that the High Court has accepted the statement of Fera Singh, PW 5 as the eyewitness of the incident ignoring the fact that his behaviour was unnatural as he claimed to have rushed to the village but had still not conveyed the information about the incident to his parents and others present there and had chosen to disappear for a couple of hours on the specious and unacceptable plea that he feared for his own safety."

18. In *Rana Partap v. State of Haryana* [(1983) 3 SCC 327 : 1983 SCC (Cri) 601], while dealing with the behaviour of the witnesses, this Court has opined thus: (SCC p. 330, para 6) "6. ... Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."

19. In *State of H.P. v. Mast Ram*[(2004) 8 SCC 660], it has been stated that there is no set rule that one must react in a particular way, for the natural reaction of man is unpredictable. Everyone reacts in his own way and, hence, natural human behaviour is difficult to prove by credible evidence. It has to be appreciated in the context of given facts and circumstances of the case. Similar view has been reiterated in *Lahu Kamlakar Patil and anr. v. State of Maharashtra*[AIR 2013 SC (Cri) 441].

20. Thus, the behaviour of witnesses or their reactions would differ from situation to situation and individual to individual. Expectation of uniformity in the reaction of witnesses would be unrealistic but the court cannot be oblivious of the fact that even taking into account the unpredictability of human conduct and lack of uniformity in human reaction, whether in the circumstances of the case, the behaviour is acceptably natural allowing the variations. If the behaviour is absolutely unnatural, the testimony of the witness may not deserve credence and acceptance. In the case at hand, PW-9 was given a threat when her mother was forcibly taken away but she had the courage to walk in the night to her grandmother who was in her mid-fifties. After coming to know about the incident, it defies commonsense that the mother would not tell her other daughter and the son-in-law about the kidnapping of the deceased by her mother-in-law. It is interesting to note that the High Court has ascribed the reason that PW-7 possibly wanted to save the reputation of the deceased-daughter and that is why she did not inform the other daughter and son-in-law. That apart, the fear factor has also been taken into consideration. Definitely, there would have been fear because, as alleged, the mother-in-law had forcibly taken away the deceased, but it is totally contrary to normal behaviour that she would have maintained a sphinx-like silence and not inform others. It is also worthy to note that she did not tell it to anyone for almost two days and it has not been explained why she had thought it apt to search for her daughter without even informing anyone else in the family or in the village or without going to the police station. In view of the obtaining fact situation, in our considered opinion, the learned trial Judge was absolutely justified in treating the conduct of the said witnesses unnatural and, therefore, felt that it was unsafe to convict the accused persons on the basis of their testimony. It was a plausible view and there were no compelling circumstances requiring a reversal of the judgment of acquittal. True it is, the powers of the appellate court in an appeal against acquittal are extensive and plenary in nature to review and reconsider the evidence and interfere with the acquittal, but then the court should find an absolute assurance of the guilt on the basis of the evidence on record and not that it can take one more possible or a different view.

iii. *Eknath Ganpat Aher vs. State of Maharashtra* (AIR 2010 SC 2657) -

para 19, 20, 21

19. In our considered opinion the aforesaid approach of the Courts below was incorrect. Nine persons including four witnesses belonging to the complainant party received injuries whereas as many as 14 accused persons received injuries including some who even suffered grievous injuries. Admittedly, there was a mob of about 75-100 persons who descended from the hill side to the place of occurrence by pelting stones and a melee followed. Not even a single witness including the injured witnesses could specifically state as to who had caused what injury either to the deceased or to the injured witnesses or to the accused. A very general statement has been made that the accused persons were armed with deadly weapons and caused injuries to the complainant party. In a

situation where a mob of 75-100 persons entered into a clash with the complainant party it could not have been possible for any of the witnesses, who would naturally be concerned with their own safety and to save themselves from the assault, to see as to who had inflicted what type of injury either on the deceased or on the injured witnesses.

20. In view of such omnibus and vague statements given by the witnesses, the Court below acquitted as many as 21 accused persons on the ground that there is no evidence on record to implicate them in the offences alleged. There being no other evidence to specifically ascribe any definite role to any of the 14 appellants herein, it is difficult to hold that any of the present appellant had inflicted any particular injury on any of the deceased or the injured witnesses. Unless there is cogent and specific evidence attributing a specific role in the incident to the accused persons, who have themselves been injured and there being no explanation forthcoming as to such injuries, it would be unsafe to pass an order recording conviction and sentence against the appellants, moreso when the prosecution has produced, in support of its case, witnesses who are inimical to the accused persons. It is crystal from the records that land of Gat No. 170 is the bone of contention between the complainant party and the accused. As noted above, civil cases with regard to the question of title and ownership to the said land have been instituted by both the accused and the complainant party which are pending final adjudication.

21. It is an accepted proposition that in the case of group rivalries and enmities, there is a general tendency to rope in as many persons as possible as having participated in the assault. In such situations, the Courts are called upon to be very cautious and sift the evidence with care. Where after a close scrutiny of the evidence, a reasonable doubt arises in the mind of the Court with regard to the participation of any of those who have been roped in, the Court would be obliged to give the benefit of doubt to them. iv. State of Uttar Pradesh vs. Om Pal (AIR 2018 SC (Cri). 694 - para 11

11. On the other hand, the conduct and statement of PW2 who was stated to be an eyewitness do not inspire confidence for the reason that his depositions under Section 161, Cr.P.C. were quite different to what he stated before Court in his examination-in-chief. He could not even give a satisfactory reason for his presence at the time and place of occurrence. Furthermore, he did not choose to lodge complaint with the police by himself even though he had witnessed the occurrence as admittedly the complaint was lodged by PW1 on the information provided by PW2. Apart from that, there were certain conflicting statements in his evidence as regards how the deceased got injuries, and also his conduct of not making a hue and cry and not disclosing to anyone about the occurrence on his way to the house of Naresh Pal, gives rise to suspicion on the credibility and trustworthiness of PW2. When the evidence of PW2 itself is unbelievable and jeopardizing the prosecution case, in no manner the evidence of PW1 could be given credence.

v. State of Maharashtra vs. Dinesh (AIR 2018 SC 2997) - para 8 to 11

8. In Joseph v. State of Kerala [Joseph v. State of Kerala, (2003) 1 SCC 465 : 2003 SCC (Cri) 356] , this Court has observed that where there is a sole witness, his evidence has to be accepted with an amount of caution and after testing it on the touchstone of other material on record. In State of Haryana v. Inder Singh [State of Haryana v. Inder Singh, (2002) 9 SCC 537 : 2003 SCC (Cri) 1239] ,

this Court has laid down that the testimony of a sole witness must be confidence inspiring and beyond suspicion, thus, leaving no doubt in the mind of the Court. In *Ramnaresh v. State of Chhattisgarh* [*Ramnaresh v. State of Chhattisgarh*, (2012) 4 SCC 257 : (2012) 2 SCC (Cri) 382], this Court, after taking note of the aforementioned two judgments, observed that "the principles stated in these judgments are indisputable. None of these judgments say that the testimony of the sole eyewitness cannot be relied upon or conviction of an accused cannot be based upon the statement of the sole eyewitness to the crime. All that is needed is that the statement of the sole eyewitness should be reliable, should not leave any doubt in the mind of the Court and has to be corroborated by other evidence produced by the prosecution in relation to commission of the crime and involvement of the accused in committing such a crime". It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement (*Seeman v. State* [*Seeman v. State*, (2005) 11 SCC 142 : 2005 SCC (Cri) 1893]).

9. In light of the above, the evidence of PW 7 Pushpabai in the present case, needs to be considered. Admittedly, PW 7 had witnessed the crime being committed by the accused at about 10.30 p.m. in the night and there was no electricity at the alleged scene of offence. According to PW 7, her husband also witnessed the crime, but they could not identify whether the accused were cutting into pieces the body of a dead person or an alive person. Even after watching the brutal crime, neither PW 7 nor her husband had raised hue and cry in the vicinity which was stated to be thickly populated, but they went to sleep peacefully and thereafter led normal life. There is also no dispute that PW 7 did not identify the respondent herein--Accused 2 and her statement was recorded after a gap of one-and-half months from the date of the incident.

10. After giving our thoughtful consideration to the evidence of PW 7, we have also considered the circumstances of the entire case and also the evidence of other prosecution witnesses. We find from the record that husband of PW 7, who was also stated to be an eyewitness to the incident, was neither examined by police at the time of investigation, nor even before the court and no satisfactory explanation for his non-examination is found on record. Apart from this, even, test identification parade was not conducted and no steps were taken to prove the blood group of the deceased with the bloodstains found on the alleged weapon used in the crime.

11. Thus, in the foregoing circumstances, especially taking note of the unnatural manner in which PW 7 kept quiet till one-and-half months after the incident, that too in the midst of thickly populated vicinity, it is not safe to convict an accused solely relying on her evidence. Thus, we find no firm ground in this appeal or reason to believe the testimony of alleged eyewitness PW 7 calling for our interference in the judgment passed by the High Court. In our view, the High Court has rightly classified and considered the evidence of prosecution witnesses and after properly analysing the facts and circumstances rendered a reasoned judgment, disbelieving the prosecution story. We, therefore, affirm the view taken by the High Court and dismiss the appeal of the State.

vi. *Krishnegowda and Others vs. The State of Karnataka by Arkalgund Police Station* (AIR 2017 SC 1657) - para 28 to 30

28. Medical Evidence: When we look at the medical evidence, the Doctor (PW10) has categorically stated that the weapons were not sent to her. In the chief examination, it was stated that the injuries 1 & 4 on the body of the deceased are possible with chopper and club. But in the cross examination it was deposed that even if a person falls on a sharp object these injuries could happen. According to PW3, the deceased fell into the drain.

(i) As per the evidence of prosecution witnesses, accused by using the sharp edge of the weapon assaulted on the right side of the forehead but the Doctor's evidence in this regard is that the deceased has not sustained incised wound on the forehead. PW10 further stated that if a person is assaulted with an object like MO4 it would result in fracture of frontal bone.

(ii) The other ground is, when the father of A5 gave a complaint against the deceased's family as the police filed 'B form' the same was closed and not filed before the Court. Apart from that, the direction of the Court to seize the gun of the deceased and file a case under the relevant provisions of the Arms Act was not brought to the notice of the Court. Non explanation of injuries on A5 is another major defect.

29. Once there is a clear contradiction between the medical and the ocular evidence coupled with severe contradictions in the oral evidence, clear lapses in investigation, then the benefit of doubt has to go to the accused.

30. Going by the material on record, we disagree with the finding of the High Court that the ocular evidence and the medical evidence are in conformity with the case of prosecution to convict the accused. The High Court has brushed aside the vital defects involved in the prosecution case and in a very unconventional way convicted the accused.

vii. Ram Narain vs. State of Punjab (1975 (4) SCC 497) - para 13 and 14

13. The High Court appears to have overlooked most of these circumstances discussed by us which were extremely damaging to the prosecution case. The High Court has lightly brushed aside the inconsistency between the medical evidence and the prosecution version. The question of the time of occurrence having been shifted from 8.00 p.m. to 6.30 p.m. has been blindly believed as also the evidence regarding the production of the weapons by the accused. In view of these striking circumstances, we should have expected the High Court to have approached this case with much more care and caution that it has, particularly when a death sentence was involved.

14. Where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistic expert, this is a most fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discredit the entire case. In *Mohinder Singh v. State* [AIR 1953 SC 415 : 1950 SCR 821] this Court observed in similar circumstances as follows:

"In a case where death is due to injuries or wounds caused by a lethal weapon, it has always been considered to be the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the

weapon with which and in the manner in which they are alleged to have been caused. It is elementary that where the prosecution has a definite or positive case, it is doubtful whether the injuries which are attributed to the appellant were caused by a gun or by a rifle."

It is obvious that where the direct evidence is not supported by the expert evidence, then the evidence is wanting in the most material part of the prosecution case and it would be difficult to convict the accused on the basis of such evidence. While appreciating the evidence of the witnesses, the High Court does not appear to have considered this important aspect, but readily accepted the prosecution case without noticing that the evidence of the eyewitnesses in the Court was a belated attempt to improve their testimony and bring the same in line with the doctor's evidence with a view to support an incorrect case.

viii. Amar Singh vs. State of Punjab (AIR 1987 SC 826) - para 9 to 12

9. It is next contended on behalf of the appellants that the learned Additional Sessions Judge and the High Court were not justified in placing any reliance upon the evidence of PW 5 Smt Veero, which is totally inconsistent with the medical evidence. It has been already noticed that all the accused persons were armed with sharp weapons. It is the evidence of PW 5 that Amar Singh, son of Bachan Singh, and Rattan Singh were each armed with a sua, Lakha Singh was armed with a barchi, Harbhajan Singh was armed with a kulhari and Amar Singh, son of Isher Das, was armed with a kirpan. She said: "Then all the accused except Bachan Singh accused surrounded my son Piara Singh (deceased). Then Lakha Singh accused gave a barchi-blow on the left knee of my son. Then Piara Singh (deceased) fell down and all the accused then gave injuries to him with their respective weapons." In her cross-examination she said that the accused persons gave quite a number of blows with their respective weapons after they had overpowered him, and that many of the blows fell on the ribs and abdomen of deceased Piara Singh. But, not a single incised wound was found on the body of the deceased by PW 2 Dr Verma. Moreover, the medical report shows that there was no injury on the ribs and abdomen of the deceased. We are unable to accept the evidence of PW 5 that although a number of blows were given by the accused with their weapons on the ribs and abdomen of deceased, yet such blows did not produce any mark of injury. The medical report submitted by PW 2 shows that there were only contusions, abrasions and fractures, but there was no incised wound on the left knee of the deceased as alleged by PW 5. If her evidence that all the accused inflicted injuries on the deceased with their respective weapons has to be accepted, then there would be incised wounds all over the body of the deceased, but the medical report shows that not a single incised wound was found on the body of the deceased. Thus the evidence of PW 5 is totally inconsistent with the medical evidence. This Court in *Ram Narain Singh v. State of Punjab* [(1975) 4 SCC 497 : 1975 SCC (Cri) 571 : AIR 1975 SC 1727] has laid down that if the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence, this is a most fundamental defect in the prosecution case and unless reasonably explained, it is sufficient to discredit the entire case. There is no explanation for the apparent total inconsistency between the evidence of PW 5 and the medical evidence.

10. In this connection, we may refer to the evidence of the second eyewitness PW 6 Anokh Singh. In his examination-in-chief this witness sought to support the prosecution case, but in cross-examination he stated in clear and unequivocal terms that he did not see Piara Singh deceased receiving any injury at the hands of the accused. No reliance, therefore, can be placed on the evidence of PW 6. So far as PW 4 Murta Singh is concerned, he is not a witness of the actual incident, as he had started running towards village Dhariwal on being chased by Amar Singh and Rattan Singh, sons of Isher Das, and hid himself in the bushes. He then waited for a short while in the bushes out of fear and then went to his use. His mother PW 5 told him that his brother Piara Singh had been murdered in the house of Bachan Singh, and that he should run away from home. Thus, out of the three witnesses, the only witness who gave evidence about the beating of Piara Singh deceased by the appellants and the other accused is PW 5 Smt Veero. Her evidence, as already noticed, is contrary to the medical evidence.

11. We may further examine the evidence of PW 5 as to the place where Piara Singh was alleged to have been killed. In her examination-in-chief she stated that all the accused took Piara Singh deceased to the courtyard of the house of Bachan Singh where he was beaten by Amar Singh, Appellant 1, with thappi. Thereafter Piara Singh was dragged inside the room of the house of Bachan Singh by the accused persons. In her cross-examination she said that after killing Piara Singh on the spot, the accused took him inside the room of the house. The evidence, however, is that blood was recovered from the room and no blood was found on the courtyard. Her evidence is, therefore, inconsistent as to the place where Piara Singh was killed by the accused. In this connection, it may be pointed out that although according to the evidence of PW 4 Murta Singh, that when he came home he found his mother weeping and she told him that the accused had killed Piara Singh, in the first information report lodged by PW 4, there is no mention of the statement of his mother that Piara Singh was killed by the accused.

12. Upon an analysis of the evidence of P.W. 5, it appears that her evidence is not only not corroborated by the evidence of any witness, but is contrary to the medical evidence as to the injuries that were found on the body of the deceased. Apart from the fact that the appellants cannot be convicted under Sections 148 and 149 IPC, it is difficult to convict them on any charge on the basis of the evidence of P.W. 5. The learned Additional Sessions Judge was not right in holding that the guilt of the appellants had been proved by the prosecution beyond all reasonable doubts. In our opinion, the evidence of P.W. 5 who turns out to be the only eye-witness in the case casts a great doubt as to the commission of any offence by the appellants and, consequently, the benefit of that doubt must go to the appellant.

ix. Shahid Khan vs. State of Rajasthan (AIR 2016 SC 1178) - para 10 and 11

10. Both the above witnesses are residents of Kota which is at a distance of about 150 kms. from Jhalawar town. According to PW 25 Mirza Majid Beg he went to Jhalawar to meet Ashok Kumar and on reaching the factory at 1.00 p.m. they happened to witness the occurrence. It is relevant to point out that PW 9 Anwar and PW 19 Anil Kumar Jain, who on intimation rushed to the occurrence place, did not state that they saw PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir in the occurrence place. It is only PW 19 Anil Kumar Jain with the help of PW 9 Anwar and PW 20 Lal

Chand lifted injured Ashok Kumar and put in the Maruti vehicle and took him to Jhalawar hospital, where he was declared dead. Thereafter PW 19 Anil Kumar Jain went to the Police Station and lodged the written complaint. In the said complaint, the names of the assailants are not mentioned and also the names of the persons who were present during the occurrence are not mentioned. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir have stated in their cross examination that they did not help PW 9 Anwar and PW 19 Anil Kumar Jain to shift the injured to the hospital and they rushed towards Toll Tax and reached the hospital in a truck and on seeing their car, without entering the hospital, they drove to Kota and they did not inform any one about the occurrence and they did not also go to the Police Station for lodging the complaint. The High Court in the impugned judgment has concluded that the presence of PW 25 Mirza Majid Beg is established in view of the fact that his Maruti van was used for shifting injured to the hospital. There was nothing on record to show the Maruti vehicle used for transporting Ashok Kumar to the hospital belonged to PW 25 Mirza Majid Beg. In fact PW 19 Anil Kumar Jain in his cross examination has stated that he did not know the Registration number of the Maruti van in which Ashok Kumar was taken to hospital and he also did not know whose vehicle it was. In other words, nothing is stood established by the use of this Maruti vehicle for transporting to the injured to the hospital and in any event this will not clinch the presence of PW 25 Mirza Majid Beg at the time of occurrence. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir slipping away unnoticed by the others particularly after the alleged attack is utterly unbelievable. It appears unreal. They are not strange to expect and they did not render any help for shifting the injured to the hospital nor had the courtesy to go inside the hospital to ascertain the condition and also did not inform the occurrence to the police. The aspect of fear is without any foundation and is not supported by any evidence of act or conduct. This plea does not impress us. In this context, it is relevant to point out that PW 25 Mirza Majid Beg has admitted that he is a history-sheeter, and two cases under NDPS Act were imposed on him and he was also bound down under Section 110 Cr.P.C.

11. The statements of PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir were recorded after 3 days of the occurrence. No explanation is forthcoming as to why they are not examined for 3 days. It is also not known as to how the police came to know that these witnesses saw the occurrence. The delay in recording the statements casts a serious doubt about their being eye-witnesses to the occurrence. It may suggest that the investigating officer was deliberately marking time with a view to decide about the shape to be given to the case and the eye-witnesses to be introduced. The circumstances in this case lend such significance to this delay. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir, in view of their unexplained silence and delayed statement to the police, does not appear to us to be wholly reliable witnesses. There is no corroboration of their evidence from any other independent source either. We find it rather unsafe to rely upon their evidence only to uphold the conviction and sentence of the appellants. The High Court has failed to advert to the contentions raised by the appellants and re-appreciate the evidence thereby resulting in miscarriage of justice. In our opinion, the case against the appellants has not been proved beyond reasonable doubt.

10. Sri.V.M.Banakar, learned Additional SPP submits that:

10.1. The trial court has considered all the aspects in proper and required manner. The judgment of conviction and order of sentence is proper and correct and does not

require any interference. The delay in the FIR reaching the Court is explained on account of the P.C.(PW.19/CW29-Manjunath) having attended to his work and taken a bus to the Magistrate Court. Therefore, there is no infirmity arising out of the said delay. 10.2. In this regard he relies upon the decision of the Hon'ble Apex Court in Betal Singh vs. State of M.P. reported in (1996) 8 SCC 205, more particularly second portion of para No.8 which is reproduced hereunder for easy reference:

8. The High Court also rightly observed that even if the F.I. R. was not immediately sent to the Court of the Magistrate, but it is of no consequence, since the F.I. R. had been lodged within 30 minutes of the occurrence and the said F.I. R. clearly described the basic prosecution case. The High Court has then analysed the evidence of PW. 1 and has held the same to be unimpeachable and established the charge against appellant Betal Singh. We find no infirmity with the judgment of the High Court. We have also ourselves scrutinised the evidence of PW. 1 and, in our view, the same evidence can be safely relied upon in establishing the charge against the appellant notwithstanding some minor inconsistency in the evidence here and there. There is not an iota of materials on record excepting the bald suggestion to PW. 1 which he denied in support of the defence theory that while there was a scuffle between the appellant Betal Singh and Prem Singh, PW. 1, the loaded gun was fired. In the premises as aforesaid and for the reasons advanced by us we do not find any merit in this appeal and the same is accordingly dismissed. The appellant who is on bail will now surrender to his bail bonds to serve out the sentence.

10.3. The FIR is not an encyclopedia of all the events. The FIR when lodged, contained all the necessary information which was required to set the criminal law into motion. No fault can be found therewith. Therefore, he submits that the above appeal is required to be dismissed.

11. When the matter was pending, the appellants filed an application in I.A.No.1/2020 under Section 367 of Cr.P.C. for production of additional documents.

Along with the said application, the documents which have been produced in S.C.No.70/2011 arising out of Crime No.42/2010 had been produced. This Court vide its order dated 21.10.2020 allowed I.A.No.1/2020 considering that this case and the case in S.C.No.70/2011 were case and counter complaint, allowed marking of the documents. The documents are marked as under:

- i) Certified copy of the Chargesheet in C.C.No.123/2011 (S.C.No.70/2011).
- ii) Certified copy of the complaint in C.C.No.123/2011 (S.C.No.70/2011) dated 26.07.2010.
- iii) Certified copy of the spot Mahazar, in C.C.No.123/2011 (S.C.No.70/2011) (in front of Milk Diary) dated 26.07.2010.

iv) Certified copy of another spot Mahazar in C.C.No.123/2011 (S.C.No.7/2011) dated 26.07.2010.

v) Certified copy of the sketch in
C.C.No.123/2011 (S.C.No.70/2011)
(near Diary)

vi) Certified copy of the sketch in
C.C.No.123/2011 (S.C.No.70/2011)

(near Diary) (drawn near Kadlenne Basappa's house:

vii) Certified copy of the wound certificate of Rudrappa Virupakshappa Kenchanagouda (S.c.No.70/2011)(near Diary).

viii) Certified copy of the wound certificate of Kariyappa Virupakshappa Kenchanagouda in C.C.No.123/2011 (S.C.No.70/2011) (near Diary).

ix) Certified copy of the wound certificate of Kantesha Basavarajappa Kenchanagouda in C.C.No.123/2011 (S.C.No.70/2011) (near Diary)

x) Certified copy of the wound certificate of Shoha Basavaraja Kenchanagouda in C.C.No.123/2011 (S.C.No.70/2011) (near Diary)

xi) Certified copy of the wound certificate of Bulamma Virupakshappa Kenchanagouda in C.C.No.123/2011 (S.C.No.70/2011) (near Diary)

xii) Certificated copy of the wound certificate of Girisha Basavarajappa Kenchanagouda in C.C.No.123/2011 (S.C.No.70/2011) (near Diary)

xiii) Certified copy of the FIR in crime No.42/2910 of Hirehadagali in C.C.No.123/2011 (S.C.No.70/2011) (near Diary)

xiv) Certified copy of the sketch drawn near Milk Dairy in C.C.No.123/2011(S.C.No.70/2011) (near Diary)

xv) Certificated copy of the Charge in C.C.No.123/2011 (S.C.No.70/2011) (near Diary)

12. It is in the background of the above submissions that we have to appreciate and re-appreciate the evidence on record in order to arrive at a conclusion as to whether the prosecution has been able to prove beyond reasonable doubt about the guilt of the accused and whether we are required to intercede in the judgment passed by the trial Court.

13. PW.1/CW.2-Shantannavara Basappa in his examination-in-chief conducted on 26.09.2013 has deposed that:

13.1. On 26.07.2010 at 4.00 p.m. the police had called him to the house of PW.4/CW.1-

Kadlenni Basappa because of the altercation that had taken place between the accused and PW.4/CW.1-Kadlenni Basappa in the hall of house of said PW.4/CW.1-Kadlenni Basappa.

13.2. The police had drawn mahazar and at that time police seized 2 banians, 3 clubs, 2 stones and 1 axe. He has identified the mahazar as Ex.P.1 and his signature as Ex.P.1(a). He has identified 3 clubs as MOs.1 to 3, two stones as MOs.4 and 5, axe as MO.6, one banian as MO.7 and other banian as MO.8. He has also identified the rough sketch of the spot which has been marked as Ex.P.2 and his signature is identified as Ex.P.2(a).

13.3. In the cross-examination conducted on the same day, he states that he was not given any instructions to write the mahazar, PW.4/CW.1-Kadlenni Basappa had given instructions. He denies that he does not know the contents of the mahazar. He also denies he has signed the mahazar at Veerabhadra Temple. He has admitted that he came to Court on the day of his examination with complainant PW.4/CW.1-Kadlenni Basappa. He has denied all other suggestions put to him and he has supported the case of the prosecution.

14. PW.2/CW.3-Ambli Jayappa in his examination-in-

chief conducted on 26.09.2013 has stated that:

14.1. He knows the complainant and accused persons. He knows PW.13/CW.17-

Eashwargouda, Kamaraj and PW.11/CW.13- Lakappa. Kamaraj and PW.11/CW.13-

Lakappa are the elder brothers of
PW.13/CW.17-Eashwargouda who is a
secretary in a milk dairy.

14.2. He has stated that on 25.07.2010 at 7.00 p.m., altercation took place between PW.13/CW.17-Eashwargouda and accused No.3-Kantesh in the dairy. Some persons who had supplied milk on that day had informed about the altercation and that the elders of the village pacified the said quarrel. 14.3. On the same day at 11.00 p.m. or at 12.00 midnight, when he was sleeping on the platform in his house, at that time he heard the sound of quarrel and he saw that the accused person had gone to the house of PW.4/CW.1-Kadlenni Basappa. At that time accused No.1-Kenchanagoudara Basavarajappa @ Basappa, accused No.4- Kariyappa and accused

No.6-Ramesh were having clubs, accused No.3-Kantesh and accused No.5-Rudrappa were having stones and accused No.2-Girish was having an axe. 14.4. He stated that the accused went into the house of PW.4/CW.1-Kadlenni Basappa and he followed them, accused dragged PW.7/CW.11-Manjappa who was sleeping in his bedroom to the hall, accused No.2-Girish tried to assault PW.7/CW.11-Manjappa with axe at that time PW.7/CW.11-Manjappa put his left hand across hence the handle of the axe hit his left hand and got fractured. Accused No.4-Kariyappa assaulted on the head of PW.7/CW.11-Manjappa with a club and also bit his left side of the chest. At that time PW.8/CW.12-Veeranna (elder brother of PW.7/CW.11-Manjappa) who was sleeping in the bedroom came outside hearing the quarrel, when accused No.5-Rudrappa assaulted on both his legs by which time PW.12/CW.14-Basavaraj came there and accused No.6-Ramesh twisted the left leg of PW.12/CW.14-Basavaraj, then Jatti Honnappa @ Kamaraj and PW.11/CW.13- Lakappa came there. Accused No.1-Basavaraj assaulted on the head of Kamaraj with a club, accused No.4-Kariyappa assaulted on the left shoulder of said Kamaraj with club, accused No.2-Girish assaulted on the head of Kamaraj with axe. When Kamaraj fell down and PW.11/CW.13-Lakappa came to his rescue, accused No.2-Girish and accused No.3- Kantesh held the said PW.11/CW.13-Lakappa tightly and accused No.5-Rudrappa assaulted on the head of said PW.11/CW.13-Lakappa with stones and someone had bitten the right arm of PW.11/CW.13-Lakappa.

14.5. At that time an ambulance came there. Kamaraj, PW.11/CW.13-Lakappa and PW.7/CW.11-Manjappa and some other persons went in the said ambulance to Government Hospital, Hadagali for treatment and thereafter to the hospital in Davangere. 14.6. A mahazar was conducted on 26.07.2010 at 7.30 p.m. or 8.00 p.m. when the police came near the house of PW.4/CW.1-Kadlenni Basappa and seized three clubs, two stones and one axe and two banians. He has identified the mahazar as Ex.P.1 and his signature as Ex.P.1(b).

14.7. He has stated that Kamaraj died in the hospital at Davanagere after 6-7 days due to the injuries sustained by him in the quarrel. He has identified the three clubs, two stones and one axe and two banians marked as MOs.1 to 8. He has further stated that the quarrel took place regarding milk. 14.8. In his cross-examination conducted on 31.10.2013, he has stated that his elder sister CW.18-Gouravva was married to PW.4/CW.1-Kadlenni Basappa (complainant) and his house is situate about 1200-1400 feet from the house of said PW.4/CW.1- Kadlenni Basappa. He admits that his house was not situate in the same lane as that of PW.4/CW.1-Kadlenni Basappa. There are six houses in the lane of PW.4/CW.1-Kadlenni Basappa and the distance is about 400-500 feet from the house of Kamaraj to the house of PW.4/CW.1-Kadlenni Basappa. He has stated that Kamaraj's house is also not situate in the same lane as PW.4/CW.1-

Kadlenni Basappa. There are 18 houses
between his house and the house of
PW.3/CW.7-Shantappanavara Chandrappa.

There is distance of 200 feet from the house of CW.6-Shantappanavara Basavarajappa to the house of PW.4/CW.1-Kadlenni Basappa. 14.9. He states that CW.6-Shantappanavara Basavarajappa was present in front of the house of PW.4/CW.1-Kadlenni Basappa. He states that some other 10-15 persons were also present there, who belong to the same village. He knows them but he is unable to say the names of those persons.

14.10. He states that PW.3/CW.7-Shantappanavara Chandrappa came to the house of PW.4/CW.1-Kadlenni Basappa after 10 minutes, after he went there, Kamaraj, PW.11/CW.13-Lakappa, PW.5/CW.5-Kadlenni Shivappa and his sons came after 10 minutes. He states that he was inside the house of PW.4/CW.1-Kadlenni Basappa when Kamaraj and others came to the house of PW.4/CW.1-Kadlenni Basappa.

14.11. He has denied that it was dark or no electricity was there in front the said house. The quarrel happened for about 20 minutes and for another half an hour after Kamaraj and others came.

14.12. It is stated that the door of the house of PW.4/CW.1-Kadlenni Basappa was already opened but he has not seen any breaking of the door. He entered the house of PW.4/CW.1-Kadlenni Basappa from the back door. He does not know who opened the back door. When he went in PW.4/CW.1-Kadlenni Basappa's house his wife CW.18-Gouravva and their sons PW.8/CW.12-Veeranna, PW.7/CW.11-Manjappa, PW.6/CW.4-Sangana Basappa and wives of PW.7/CW.11-Manjappa and PW.6/CW.4-Sangana Basappa were weeping.

14.13. He was recalled and further cross-examined on 23.11.2013. He states that his house is at a distance of 60-70 feet from the main road and admits that if a person were to sit in front of his house, then that person would not be visible to the persons passing in the lane. He admits that he would not be able to hear the sound of any quarrel in the event of quarrel taking place near the place of PW.4/CW.1-Kadlenni Basappa. He admits that he would not know about any quarrel unless someone informs him.

14.14. He states that he was sleeping in his house from 10.30 p.m. to 12.30 a.m. He denies the knowledge of the person running the milk dairy prior to PW.13/CW.17-Eashwargouda. He states that PW.11/CW.13-Lakappa went to the hospital at Huvina Hadagali for treatment but he did not go and see him. Wife of PW.4/CW.1-Kadlenni Basappa (CW.18- Gowramma) has not sustained any injuries but she was unconscious. He states that PW.8/CW.12-Veeranna, PW.7/CW.11- Manjappa, PW.6/CW.4-Sangana Basappa and Basanna had sustained injuries in the altercation but were not taken to the hospital for treatment. He was there in the house of PW.4/CW.1-Kadlenni Basappa till the ambulance came which was about 20 minutes. There were about 25 persons present in the house who are the natives of the village but he cannot name them. 14.15. He states that neither himself nor PW.4/CW.1-Kadlenni Basappa went to the Police Out Post to inform about the incident. He also did not go to Holalu Police Station. He does not know whether PW.4/CW.1-Kadlenni Basappa went to Hadagali Police Station. 14.16. He states that it had rained before and after the quarrel. In that it was drizzling. PW.5/CW.5-Kadlenni Shivappa's house is behind the house of

PW.4/CW.1-Kadlenni Basappa. He did not observe whether the door of Kadlenni Shivappa's house was open or not. He admits that when it rains no one sleeps on the platform in front of the house. 14.17. He was recalled and sworn in on 04.01.2014.

He states that he does not know if on that night at 10.30 p.m. the complainant and others had assaulted the accused persons in front of the house of PW.4/CW.1-Kadlenni Basappa. He also states that he does not know if the accused had lodged complaint against PW.4/CW.1-Kadlenni Basappa and others for assaulting the accused at 10.30 p.m. 14.18. He states that the police came to the house of PW.4/CW.1-Kadlenni Basappa after the quarrel at about 12.00 midnight or at 12.30 hours, when he was present. He states that he has not observed whether the police have taken clubs, stones, axes, banian. However, PW.4/CW.1-Kadlenni Basappa had shown them to the police. He states that he did not observe whether they were bloodstained or not. He states that the police were there up to 3.00 a.m. (night) and on the next morning at 10.30 a.m. they once again came and called him to the spot and enquired about the quarrel, the police recorded his statement. The police drew mahazar in his presence and at that time the police have taken 3 clubs, 2 stones, 1 axe and two bloodstained banians. 14.19. He admits that MOs.1, 2, 3 and 6 are available in the house of any agriculturist and MOs.7-8 stones were there in the house of PW.4/CW.1-Kadlenni Basappa. The police had not taken all the stones. He identified Ex.P.2 as the spot sketch. He has denied rest of the suggestions put to him.

15. PW.3/CW.7-Shantappanavara Chandrappa in his examination-in-chief conducted on 31.10.2013 has stated that;

15.1. He knows the complainant-Kadlenni Basappa (PW.4/CW.1) as also the accused persons. He also knows PW.13/CW.17-Eashwargouda, Kamaraj and PW.11/CW.13-Lakappa. He has similarly stated as PW.2/CW.3-Ambli Jayappa about the relationship between the parties and as also about the quarrel in front of the milk dairy.

15.2. He has stated that on the same day while he was sleeping on the platform in front of his house at midnight, all the accused persons went to the house of PW.4/CW.1-Kadlenni Basappa and creating ruckus. At that time accused No.1-Kenchanagoudra Basavarajappa, accused No.4-Kariyappa and accused No.6-Ramesh were having clubs, accused No.3-Kantesh and accused No.5- Rudrappa were having stones and accused No.2-Girish was having an axe. He states that thereafter PW.2/CW.3-Ambli Jayappa and he went to the house of PW.4/CW.1-Kadlenni Basappa. At that time, the accused had trespassed into the house of PW.4/CW.1- Kadlenni Basappa, accused No.2-Girish had dragged PW.7/CW.11-Manjappa from his bedroom to the hall, and assaulted PW.7/CW.11-Manjappa with an axe. 15.3. He has deposed more or less similarly to what has been stated by PW.2/CW.3-Ambli Jayappa as regards the assault which took place in the house of PW.4/CW.1-Kadlenni Basappa.

15.4. He states that PW.11/CW.13-Lakappa took all the injured persons to the Government Hospital, Hadagali in 108 ambulance and Kamaraj died at Davanagere Hospital after 6 days. He has identified MOs.1 to 6. 15.5. He was recalled and cross-examined on 04.01.2014, wherein he has stated that the villagers would usually sleep at 9.30 p.m. everyday. He has admitted that the month of July is rainy

season and on the date of the incident it was drizzling. He states that the villagers would usually sleep inside the house when it rains but some also sleep on the platform. He states that on the date of the incident, he was sleeping on the platform in front of his house. There is a distance of 3/4th furlongs from the house of PW.2/CW.3-Ambli Jayappa to his house. The police came to the house of PW.4/CW.1-Kadlenni Basappa at 12 O'clock. When he was in the house of PW.4/CW.1-Kadlenni Basappa, there were more than 15 persons in the said house. He is unable to say their names, but states that they were residents of the village. He states that his house and PW.4/CW.1-Kadlenni Basappa's house are in the same lane at a distance of 60-70 feet. He does not know if the accused have also lodged complaint against PW.4/CW.1-Kadlenni Basappa and others for assaulting them. When he went to the house of PW.4/CW.1-Kadlenni Basappa, the iron gate and main door were open, about 15-20 persons were outside the house. He states that the quarrel lasted for 45 minutes. He and other 15-20 persons tried to pacify the quarrel. He has further stated that Kamaraj, PW.11/CW.13-Lakappa and PW.12/CW.14-Basavaraj were not there in the house of PW.4/CW.1-Kadlenni Basappa when police came there. He has denied rest of the suggestions.

16. PW.4/CW.1-Kadlenni Basappa in his examination-

in-chief conducted on 07.03.2014 has stated that; 16.1. PW.13/CW.17-Eashwargouda is the son of his elder sister (nephew). He knows about the quarrel which took place on 25.07.2010 in front of the milk dairy. When he was at his house some persons came and told him about the quarrel and then he, his younger brother PW.5/CW.5-Kadlenni Shivappa, PW.7/CW.11- Manjappa and PW.8/CW.12-Veeranna went there. In the meanwhile, PW.14/CW.22- Dyamappa and CW.23-Kaddigoudara Bharamappa pacified the said quarrel and they came back to the house. He states that on the same day at midnight all the accused persons came to his house. He also states as regards who was carrying which weapons as per PW.2/CW.3-Ambli Jayappa and PW.3/CW.7-Shantappanavara Chandrappa. 16.2. He has stated that the accused persons came near his house and were shouting that they will kill him and his children. When he came out of the house on hearing the sound, he requested them not to make any sound and they can settle the matter in the morning. In spite of that they pushed the front door of the house and entered the house. The back lock of the said front door fell down. He has also described the assault and quarrel similar to that stated by PW.2/CW.3-Ambli Jayappa and PW.3/CW.7-Shantappanavara Chandrappa.

16.3. He states that some persons who had gathered there had called an ambulance and taken them to the Government Hospital, Huvina Hadagali for treatment. The police came there after Kamaraj was taken in the ambulance. He states that he and his younger brother PW.5/CW.5-Kadlenni Shivappa went to the Police Out Post at 1.00 a.m. PW.5/CW.5-Kadlenni Shivappa lodged the complaint as per his instructions and he gave the complaint. He has identified the complaint as Ex.P.3 and signature of the witness as Ex.P.3(a).

16.4. He states that the police came on the next day, took photographs, seized clubs and drawn mahazar in the presence of PW.2/CW.3-Jayappa, PW.1/CW.2- Shantappanavara Basappa and seized MOs.1 to 8. The doctor at Huvina Hadagali Hospital advised to take Kamaraj to Chigateri Hospital, Davanagere. Hence, he was taken to Chigateri Hospital and then to City Central Hospital, Davanagere, where he was in coma for 5 days and later died on 01.08.2010 in the hospital.

16.5. He was cross-examined on 26.04.2014, wherein he has stated that he does not know the contents of the complaint, it was written by his brother PW.5/CW.5-Kadlenni Shivappa. He admits that in the complaint, it is stated that the accused persons had broken the back door of the house and entered into the house.

16.6. The police came to the scene of crime at midnight 12 O'clock, after the death of Kamaraj. About 15-20 persons had gathered there when the police came to the spot at midnight and that it was drizzling at that time. He states that he slept at 9.00 p.m. He has no proper eyesight. He had not opened the main door of the house. He was near the back door of the house, which had been locked by him, but was opened by the accused persons. That night, he had slept alone on the platform near the back door.

The house of his younger brother PW.5/CW.5-Kadlenni Shivappa is about 30 feet from the back door of his house. PW.5/CW.5-Kadlenni Shivappa and his sons were also sleeping on the platform.

16.7. He states that the accused persons had broken the front door and entered into the house and before he came to the front door of the house, about 10-15 persons had entered the house. He knows the name of some person. He knows some persons, but he does not know the name of everyone.

16.8. He was recalled and further cross-examined on 05.07.2014, wherein he has stated that 10-15 people had come to his house, but he is unable to say who they are, but they are all from his village and he knows them. He states that the quarrel happened for about one hour. He admits that the accused have filed a case against him and that he and others are accused in that case.

16.9. He denies that his nephew had hit the accused and they were taken to the hospital. He denies there were 4-5 criminal cases against Kamaraj, but admits that there was a fight as regards water pipeline. He denies that there was a case filed by Kamaraj for hitting BEO or about a sand mining case being filed against him. He denies that he is a congress leader. He states that he has not gone to the hospital with the wounded or anytime thereafter. He admits that PW.2/CW.3-Ambli Jayappa is his son-in-law. He cannot say at what time police came to his house. He admits that MOs.1 to 6 are commonly found in the farmers house. He does not know that is written in Ex.P.1.

17. PW.5/CW.5-Kadlenni Shivappa in his examination-

in-chief conducted on 05.07.2014 has stated that; 17.1. PW.4/CW.1-Kadlenni Basappa is his brother, PW.6/CW.4-Sangana Basappa, PW.7/CW.11- Manjappa and PW.8/CW.12-Veeranna are his brother's children, PW.12/CW.14-Basavaraj and CW.15-Nagaraj are his children, PW.11/CW.13-Lakappa, Kamaraj and PW.13/CW.17-Eashwargouda are his nephews and that PW.13/CW.17- Eashwargouda works as a secretary at dairy. He states that on 25.07.2010 at 7.00 p.m. he went to the dairy after coming to know about the fight between PW.13/CW.17-Eashwargouda and accused No.3-Kantesh regarding an issue about milk.

17.2. The fight was pacified by CW.23-

Kaddigoudara	Bharamappa	and
PW. 14/CW.22-Harlalli	Dyamappa	and

thereafter they went home. After dinner when he was sleeping at home at 12 O'clock he has stated about accused No.1- Kenchanagoudra Basavarajappa and others carrying various MO's and entering the house of PW.4/CW.1-Kadlenni Basappa. Hearing the commotion, he and his children PW.12/CW.14-Basavaraj, CW.15-Nagaraj went there. At that time Kamaraj and PW.11/CW.13-Lakappa also came there. He states that accused No.4-Kariyappa pointed to them and stated that he would kill them. 17.3. He has stated that accused No.1- Kenchanagoudra Basavarajappa hit on the head of Kamaraj with great force with a stick, accused No.3-Kantesh hit the head of Kamaraj with stone and accused No.2-Girish hit on the head of Kamaraj with an axe when he started bleeding and fell down. He states that when PW.11/CW.13-Lakappa went to help Kamaraj, accused No.2-Girish and accused No.3-Kantesh held PW.11/CW.13- Lakappa and accused No.4-Kariyappa hit on the head of PW.11/CW.13-Lakappa with stick. accused No.5-Rudrappa hit him with stone and accused No.3-Kantesh bit his shoulders. An ambulance was called by someone and the injured were taken in it. At that time, accused threw the weapons and fled. 17.4. He states that his son PW.12/CW.14- Basavaraj had injures on his right knee. PW.11/CW.13-Lakappa had broken his hand and his head was injured. Kamaraj was bleeding from the head and was unconscious. At first, they went to Hadagali Government Hospital and after first aid was administered they went to Davanagere City Central Hospital, where Kamaraj was admitted. He came to know about the death of Kamaraj on 01.08.2010, the death having occurred because of the assault done by the accused. He identifies MOs.1 to 6.

17.5. In his cross-examination on the same day, he has stated that his daughter is married to the brother of accused No.1-Kenchanagoudra Basavarajappa. Accused No.1- Kenchanagoudra Basavarajappa, his brothers and his children live together. He denies about the fight in the evening taking place at 6.00 p.m, but states that it took place at 7.00 p.m. He denies that accused No.3-Kantesh was assaulted. He also denies that at 10.30 p.m. when the accused were going to grain thrashing yard, he and his brothers assaulted them. He states that at 10.00 p.m. on that day it was raining. He states that the police had come at 10.00 a.m. on the next day after the incident. He has not gone to the hospital to see the injured. He has not given any statement to the police. He states that 20-25 people had gathered during the incident, some were inside and some were outside. They were from his village, he knows them but he cannot name them.

17.6. He states that he has entered the house of his brother PW.4/CW.1-Kadlenni Basappa through the back door. He went with his brother to file the complaint. He denies all other suggestions and supported the case of the prosecution.

18. PW.6/CW.4-Sangana Basappa in his examination-

in-chief conducted on 05.07.2014 has stated that; 18.1. PW.4/CW.1-Kadlenni Basappa is his father, PW.7/CW.11-Manjappa and PW.8/CW.12- Veeranna are his brothers, PW.5/CW.5- Kadlenni Shivappa is his uncle (father's younger brother), PW.12/CW.14-Basavaraj and CW.15-Nagaraj are his cousins, PW.11/CW.13-Lakappa, deceased Kamaraj and PW.13/CW.17-Eashwargouda are his uncles, PW.13/CW.17-Eashwargouda is the secretary of milk dairy.

18.2. He has stated that on 25.07.2010 at about 7.00 p.m. he heard from others that accused No.1-Kenchanagoudra Basavarajappa, his brothers and children had a fight with PW.13/CW.17-Eashwargouda with regard to dispute regarding milk delivered. At that time his father PW.4/CW.1-Kadlenni Basappa, Kamaraj, PW.11/CW.13-Lakappa and others went and stopped the fight and returned home. On the same night at 12.00 a.m., accused No.1-Kenchanagoudra Basavarajappa, his brothers and children came to their house holding wooden sticks and stones in their hands and started shouting. Thereafter they broke open the door of their house and entered their house. They went into the room of his brother PW.7/CW.11-Manjappa who was sleeping in the room and dragged him out. When accused No.2-Girish tried to hit on his head with axe, PW.7/CW.11-Manjappa tried to block with his hand and as such his left hand broke. Accused No.4-Kariyappa hit him on the head with wooden stick and bit his chest. When his other brother PW.8/CW.12- Veeranna who was sleeping in another room came out, accused No.4-Kariyappa hit him on his left shoulder with wooden stick. At that time his uncle PW.5/CW.5-Kadlenni Shivappa, his children PW.12/CW.14-Basavaraj and CW.15-Nagaraj came there followed by Kamaraj, PW.11/CW.13-Lakappa. Accused No.6-Ramesh shoved down PW.12/CW.14- Basavaraj, twisted his left leg and hit him with a wooden stick on both legs and thereafter accused No.1-Kenchanagoudra Basavarajappa with wooden stick, accused No.3-Kantesh with stone and accused No.2- Girish with an axe, hit Kamaraj with full force on his head, then he started to bleed and lost conscious and fell down. When PW.11/CW.13-Lakappa went to lift Kamaraj, accused No.2-Girish and accused No.3- Kantesh held PW.11/CW.13-Lakappa and accused No.5-Rudrappa hit PW.11/CW.13- Lakkappa with a stone on his head, accused No.6-Ramesh hit his knee with a stick, accused No.3-Kantesh bit the right shoulder of PW.11/CW.13-Lakappa.

18.3. At that time, PW.1/CW2-Shantappnavara

Basappa,

CW.6-Shantappanavara

Basavarajappa, PW.3/CW.7-Shantappanavara Chandrappa, PW.2/CW.3-Ambli Jayappa, Gooleppa came into the house and pacified the galata.

18.4. Someone had called 108 ambulance, PW.11/CW.13-Lakappa and Kamaraj were put in the ambulance and were taken to Hadagali Hospital and thereafter Kamaraj was taken to Davanagere City Central Hospital for better treatment. He was in coma for 6-7 days and thereafter he expired. His death was due to the assault caused on him.

18.5. He states that the incident occurred in the hall (padasale) of his house at 12.00 a.m. He identifies MOs.1 to 5 as stones and sticks. and axe as MO.6. He states that the police had made enquiry with him and recorded a statement on 30.07.2010.

18.6. In the cross-examination conducted on the same day, he states that the quarrel lasted for about 45 minutes, The fight was going on for 45 minutes prior to PW.5/CW.5-Kadlenni Shivappa, his children, Kamaraj and PW.11/CW.13-Lakappa coming to the house. At that time no one from the

village was present at the spot.

18.7. They were sleeping prior to the incident and had not come out. The bolt of his house had been broken. His father had slept on the platform next to the place where arrangements were made for tying the cattle. He did not open the door even after hearing the sound of the quarrel. He woke up due to the said sound. He does not know whether his father was awake, he did not wake him up. His father opened the back door and came out. He does not know if anybody else was present at that time. He had witnessed the entire quarrel for the duration of 45 minutes.

18.8. He states that his father was in the house when the quarrel had happened. PW.5/CW.5-Kadlenni Shivappa and his sons came into the house from back door. Thereafter the quarrel went on for 50 more minutes. PW.5/CW.5- Kadlenni Shivappa, his sons as also Kamaraj and PW.11/CW.13-Lakappa came into the house at the same time. It was drizzling at that time.

18.9. He denies that the police came at 11 O'clock.

He states that they came at 12 O'clock. At that time there were various villagers. The police did not make enquiries with him or with his father. He had not shown which stone/stick/axe was used by the accused in the quarrel, to the police. He had also not informed the police that accused had threatened to kill all of them. He had not informed the police who hit whom, and where, as also of Kamaraj having been unconscious. He did not see if the police were there till the morning. He had not informed the police that he had been injured on account of the assault by the accused. He did not suffer from any injuries. He states that the police did not make enquires with the people who had gathered around the house. He states that the items like MOs.1 to 6 may be available in any farmer's house. 18.10. He denies that PW.7/CW.11-Manjappa went to the hospital and obtained treatment. He further denies that PW.8/CW.12-Veeranna and PW.12/CW.14-Basavaraj also did not get any treatment. He does not know if accused had filed a complaint alleging that they were assaulted when they were going to their Grain thrashing yard on 25.07.2010 at 10.30 p.m. He has denied the suggestion that he had not come to the Court as an accused in that matter. He admits that there was a fight in front of the milk dairy on that day evening. He denies because of that the complainants had assaulted the accused.

18.11. He states that there were about 7-8 persons in front of his house. He knows them, but he is unable to give their names. He states that the police did not come to his house the next day of the quarrel. He did not go to the police station on the next day. He denies all other suggestions made to him.

19. PW.7/CW.11-Manjappa son of PW.4/CW.1-Kadlenni Basappa in his examination-in-chief conducted on 26.07.2014 has stated that;

19.1. PW.4/CW.1-Kadlenni Basappa is his father, PW.6/CW.4-Sangana Basappa and PW.8/CW.12-Veeranna are his brothers, PW.8/CW.12-Veeranna is his uncle's son (father's younger brother's son), PW.11/CW.13-Lakappa and Kamaraj are his cousins, PW.13/CW.17-Eashwargouda is his nephew and secretary at the dairy. He knows the accused, they are from his village. 19.2. On

25.07.2010 at 7.00 p.m. there was a fight between PW.13/CW.17-Eashwargouda and accused No.3-Kantesh regarding the milk delivered, at that time he was in his house. He came to know about the fight from someone. Hence, he along with PW.8/CW.12- Veeranna, PW.12/CW.14-Basavaraj, PW.5/CW.5-Kadlenni Shivappa and PW.4/CW.1-Kadlenni Basappa went to the dairy. By that time, fight had already been stopped by PW.14/CW.22-Dyamappa and CW.23-Kaddigoudar Bharamappa. Hence, all went back, at which time the accused had threatened not to spare them.

19.3. He states that on the same night when he was sleeping around 12 midnight, the accused came to their house and started shouting and screaming, hearing that he woke up. The accused kicked open the door of his bedroom, dragged him out to the hall (padasale) of the house. When accused No.2- Girish tried to hit him with axe, he put up his hands to avoid injury to his head at that time handle of the axe hit his left hand resulting in fracture. Accused No.4-Kariyappa hit him with stick and bit him on his chest. When his brother PW.8/CW.12-Veeranna who was in another room woke up to the sound and came there, accused No.4-Kariyappa hit him on his left shoulder and poked his left eye. At that time PW.12/CW.14-Basavaraj, PW.5/CW.5-Kadlenni Shivappa and CW.15- Nagaraj also came in. Then accused No.6- Ramesh hit PW.12/CW.14-Basavaraj on both his knees, accused No.1-Kenchanagoudra Basavarajappa hit Kamaraj's head with wooden stick, accused No.3-Kantesh smashed on his head with stone, accused No.2-Girish hit him with axe. At that time Kamaraj was bleeding and became unconscious and fell to the ground. PW.11/CW.13-Lakappa rushed towards Kamaraj. Then accused No.2-Girish and accused No.3-Kantesh held him and accused No.4-Kariyappa hit him on his right thigh with a wooden stick, accused No.5-Rudrappa hit him on his head with a stone, accused No.4- Kariyappa bit the right shoulder of PW.11/CW.13-Lakappa. When the ambulance came, PW.11/CW.13-Lakappa put Kamaraj in the ambulance and they were taken to Davanagere Chigateri Hospital. When they were not treated, they were taken to Davanagere City Central Hospital, where Kamaraj continued to be in coma and expired on 01.08.2010. Kamaraj was also known as Honnappa.

19.4. He states that he was also injured in the fight. He was admitted to Davanagere City Central Hospital for three days. Kamaraj died due to heavy blow from the axe. He states that he gave statement to the police on 6th and he identifies MOs.1 to 6.

19.5. In his cross-examination conducted on the same day, he denies that the accused are related to him. He does not know if the daughter of PW.5/CW.5-Kadlenni Shivappa and brother of accused No.1-Kenchanagoudra Basavarajappa were married. He states that at 6.00 p.m. that day there was a fight when accused No.3-Kantesh had been to deliver the milk. The police had not come to the spot at that time. They slept at 9.30-10.00 p.m. He denies that when he got up the house was in darkness. He states that no one else from the village was present at that time. His father was sleeping near the cattle shed, his brother PW.6/CW.4-Sangana Basappa was sleeping in a room. He does not know who broke the door or who opened the door. He does not know if the back door was open. When he got up no one was awake. After ten minutes PW.8/CW.12-Veeranna came. He does not know at what time PW.6/CW.4-Sangana Basappa came there. His father came there five minutes before he was hit. The incident took place for about 30- 40 minutes.

19.6. He states that if one were to stand on east of the door of his house, the house of PW.11/CW.13-Lakappa would not be seen. He states that on that day the main door of his house had not been broken. He does not know who opened the door of his house. He has not seen whether latch of the back door had been broken. He does not know who all from his house had woken up. Within ten minutes after waking up, his brother PW.8/CW.12-Veeranna came there. He does not know if PW.6/CW.4-Sangana Basappa had been arrested. His father had come to the spot within five minutes after PW.7/CW.11-Manjappa was assaulted. The quarrel went on for 30-45 minutes. They cannot see PW.11/CW.13-Lakappa's house from the east door of the house of PW.4/CW.1-Kadlenni Basappa. Before Kamaraj and PW.11/CW.13-Lakappa came to the place there was no one else from the village who had come there.

19.7. He states that at the time when the quarrel was going on, 25 people from the village might have gathered there. He knows them, but is unable to state their name.

19.8. He denies that at 10.30 p.m. on the same day when accused were near his house and going to grain thrashing yard, they had assaulted the accused. The accused had come to their house at 12.00 midnight. The police had come inside the house. He was present when the police came but he did not inform them about the quarrel. But his father had informed. PW.6/CW.4-Sangana Basappa and PW.5/CW.5-Kadlenni Shivappa also informed the police. When the police came, PW.11/CW.13-Lakappa and Kamaraj were not in the house. They had been taken in an ambulance to the hospital. There were two policemen near the house. When the police came at 6.00 a.m. on the next day morning, he had been to Davanagere. He states, on the night of the incident he did not get any treatment done. Before 28th the police had not taken the statement. Even after 28th he had not gone to the police station. After he was discharged from the hospital, he gave statement on 5th. He again says he does not know on which date he gave the statement. He states that the police wrote down what he had stated. He states that his father and his brother PW.6/CW.4-Sangana Basappa were not injured. PW.12/CW.14-Basavaraj and PW.8/CW.12-Veeranna also did not get any treatment. He denies rest of the suggestions made to him.

20. PW.8/CW.12-Veeranna in his examination-in-chief conducted on 26.07.2014 states that; 20.1. PW.4/CW.1-Kadlenni Basappa is his father.

His father, brothers PW.7/CW.11-Manjappa, PW.6/CW.4-Sangana Basappa Basappa, his mother CW.18-Gouramma, wife CW.19- Roopa and sister CW.20-Manjulamma stay together. He states that PW.13/CW.17- Eashwargouda is the son of his aunt (father's sister) and he works as secretary in the dairy. On 25.07.2010 at 7.00 p.m. when he was at home, he came to know that PW.13/CW.17- Eashwargouda and accused No.3-Kantesh were fighting in front of milk dairy. He along with his father and PW.7/CW.11-Manjappa went there, by that time, PW.14/CW.22-

Dyamappa and CW.23-Kaddigoudar Bharamappa had stopped the fight. That night while sleeping, he heard some commotion and came out only to see the accused were dragging his brother PW.7/CW.11-Manjappa from the room and accused No.2-Girish was hitting him with an axe which was blocked by him with his hand resulting in fracture of his left hand. 20.2. He has further described the fight/quarrel in more or similar manner as that described by others. He identifies

MOs.1 to 6 as sticks, stones and axe.

20.3. In his cross-examination held on the same day, he states that when he woke up and he came out he saw accused were beating his brother PW.7/CW.11-Manjappa. At that point of time none of the villagers were present near the house. He states that usually the door would be locked at night. He does not know who opened the door at 12.00 a.m. His father PW.4/CW.1-Kadlenni Basappa and his brother PW.6/CW.4-Sangana Basappa were in the hall (padasale) and both were uninjured. He states that the door was not broken but the latch was open. He states that the quarrel happened for 30 minutes during which period 4-5 persons from the village had come to their house. PW.5/CW.5-Kadlenni Shivappa and his children came at 12.15 a.m. and 5-10 minutes thereafter PW.11/CW.13- Lakappa and Kamaraj came there.

20.4. He denies that in that fight which happened at 6 O'clock, they had assaulted accused No.3-Kantesh. He also denies when the accused were going to their Grain thrashing yard at 10.30 p.m. they assaulted the accused. He states that the police did not take statement that night. He did not show the sticks, axe and stones to the police. 20.5. When the police came, his father PW.4/CW.1-Kadlenni Basappa, his brother PW.6/CW.4- Sangana Basappa and PW.7/CW.11-Manjappa were there. None of them gave any statement to the police. He does not know what time police had come, but they had come to his house. He is unable to say the time because of the long passage of time. He again says that the police did not come on the next day and again retracts by saying that they had come. Then he states that the police came after 11 O'clock. Then he informed the police about the incident. Statements were given by his father, his brother PW.6/CW.4-Sangana Basappa, his uncle PW.5/CW.5-Kadlenni Shivappa and PW.12/CW.14-Basavaraj. The police seized the sticks, stones and axe on that day. The police did not come two days after. He denies all other suggestions made to him.

21. PW.9/CW.8-Honnappa S/o Mahadevappa in his examination-in-chief conducted on 10.10.2014 has stated that;

21.1. On 01.08.2010 police had called him to Davanagere C.J. Hospital for panchanama regarding dead body of the deceased Kamaraj. At the hospital, Kamaraj was on a table at the morgue and his head was completely wrapped in bandages. He came to know that he had died due to the injuries sustained during the assault. Inquest Panchanama was carried out at 8-10 p.m. and he has signed the same. The inquest panchanama was identified as Ex.P.4 and his signature as Ex.P.4(a).

21.2. In the cross-examination conducted on the same day, he says that PW.4/CW.1-Kadlenni Basappa is his uncle. The police had come and taken him. The doctors had opened the wound in his presence and thereafter bandaged it and the details were entered into the panchanama.

22. PW.10/CW.10-Rajashekhar Jatti, in his examination-in-chief conducted on 10.10.2014 states that;

22.1. He is a native of Hadagali taluk, Holalu village. PW.13/CW.17-Eashwargouda is his brother who is the secretary of the dairy. PW.4/CW.1-Kadlenni Basappa is his uncle. PW.11/CW.13-Lakappa

and Kamaraj are his brothers. He states that on 25.07.2010 he was at Ranebennur when PW.13/CW.17- Eashwargouda had called him at 7.00 p.m. and told him over phone about his quarrel with accused No.3-Kantesh. Later at 3.00 a.m, PW.13/CW.17-Eashwargouda and PW.8/CW.12-Veeranna had called him and told him about the fight that had happened at 12.00 a.m. where the accused No.1- Kenchanagoudra Basavarajappa, his brothers accused No.4-Kariyappa, accused No.5-

Rudrappa, accused No.6-Ramesh and
accused No.1-Kenchanagoudra

Basavarajappa's children accused No.2-Girish and accused No.3-Kantesh had come to PW.4/CW.1-Kadlenni Basappa's house, armed with stones, sticks and axe, they barged into the house and assaulted them including PW.11/CW.13-Lakappa and Kamaraj who were hit with wooden sticks and axe and were seriously wounded as a result of which they were taken to Davanagere Hospital. 22.2. He went to the hospital at 9.00 a.m. and met PW.11/CW.13-Lakappa and his wife. Kamaraj was seriously injured and was in ICU. When he enquired PW.11/CW.13-Lakappa, he had informed him about accused No.1- Kenchanagoudra Basavarajappa, accused No.4-Kariyappa, accused No.2-Girish and accused No.3-Kantesh having assaulted them and of PW.2/CW.3-Ambli Jayappa and PW.1/CW.2-Shantappanavar Basappa having broken up of the fight, Kamaraj expired on 01.08.2010 at 2.20 p.m. on account of the injuries sustained.

22.3. In the cross-examination conducted on the same day, he has stated that he was not in Holalu village at 7.00 p.m. on that day. PW.13/CW.17-Eashwargouda had called him twice. He has not given the mobile number to the police and he was in the hospital from 9.00 a.m. From next day onwards he was visiting the hospital every day. He states that he had not met the police when he was at the hospital. He does not know the exact dates on which he visited the village. He has discussed with PW.4/CW.1-Kadlenni Basappa about the incident on one occasion. The police have taken his statement on 01.08.2010 and 02.08.2010. He has not gone to the police station but he has seen the wounds on his brother.

23. PW.11/CW.13-Jatti Lakkappa in his examination-

in-chief conducted on 10.10.2014 has stated that; 23.1. PW.4/CW.1-Kadlenni Basappa is his uncle, Kamaraj and PW.13/CW.17-Eshwargouda are his brothers. PW.13/CW.17-Eshwargouda is working as secretary at the dairy. On 25th July, 2010 a fight had taken place between PW.13/CW.17-Eshwargouda and the accused regarding an issue with the milk. Himself, Kamaraj, PW.12/CW.14-Basavaraj, PW.6/CW.4-Sangana Basappa went to dairy and saw them fighting. Then PW.14/CW.22- Dyamappa and CW.23-Kaddigoudara Bharamappa stopped the fight, thereafter they went home. At night when they were sleeping, at 12 midnight accused had come to the house of PW.4/CW.1-Kadlenni Basappa shouting and making a racket. He and Kamaraj went to the house of PW.4/CW.1- Kadlenni Basappa, by that time PW.5/CW.5- Kadlenni Shivappa and PW.12/CW.14-Basavaraj had also come there. Accused No.3-Kantesh was beating PW.12/CW.14- Basavaraj when

they entered. The accused pointed to them, used foul language and threatened them. They assaulted Kamaraj, PW.12/CW.14-Basavaraj hit his brother on his head with a stick, accused No.2-Girish assaulted with a axe and Accused No.3- Kantesh with a stone on the head of the Kamaraj. When he went to help his brother, accused No.2-Girish and Accused No.3- Kantesh held him tightly, accused No.5- Rudrappa smashed his head with stone, accused No.4-Kariyappa hit his right leg with stick and Accused No.3-Kantesh bit his right shoulder. An ambulance had come by then. Hence, he, Kamaraj and his sister-in-law went to Hadagali hospital, where the wounds were stitched and they were sent to Davanagere City Central Hospital. After 4-5 days Kamaraj died at the hospital. He identifies MOs.1 to 6 as also the accused. 23.2. In the cross-examination held on the same day, he states that their house is next to the main road and PW.4/CW.1-Kadlenni Basappa's house is in the next cross. It was raining that night and they were sleeping outside on the porch. He states that from his house no one could see inside PW.4/CW.1- Kadlenni Basappa's house, no one woke them. They entered PW.4/CW.1-Kadlenni Basappa's house from the east door, there were 10-20 people from the village who had gathered in front of the house. He knows them, but he cannot name them. By the time they had gone to the house, the quarrel was going on for more than 50 minutes. They were there for 60-90 minutes then the police came there. The police did not make any enquiry at that time and he did not tell them that the accused had assaulted them. The police had gone with him to Davanagere Hospital. He has not taken any treatment for his wounds. Even on that day police had not made any enquiry and he had not told the police about the incident. He had informed PW.10/CW.10-Rajashekhar about the incident and he came to the hospital and stayed till morning and would come everyday to the hospital.

23.3. He again states that he took treatment in Davanagere City Central Hospital. He states that he came to know about the fight that occurred on 25.07.2010 at 5.00 p.m. He denies that he, Kamaraj and PW.13/CW.17- Eshwargouda had assaulted Accused No.3- Kantesh and accused No.1-Kenchanagoudra Basavarajappa. He denies that they had assaulted and caused injuries to the accused at 10.00 p.m. on that night. The police had not come to the place at 10.30 in the night. He denies that accused had gone to the hospital for treatment at 11.00 p.m. He denies all other suggestions put to him. He states that the police had not come to the hospital after Kamaraj's death nor did they take any statement. They did not come for the final rites of his brother and he has also not gone to the police station.

24. PW.12/CW.14-Kadlenni Basavaraj in his examination-in-chief conducted on 15.11.2014 has stated that;

24.1. PW.4/CW.1-Kadlenni Basappa is his uncle (elder brother of his father), PW.5/CW.5- Kadlenni Shivappa is his father, PW.7/CW.11- Manjappa and PW.8/CW.12-Veerappa are his brothers, PW.11/CW.13-Lakappa, PW.13/CW.17-Eshwargouda and Kamaraj are his uncles, PW.13/CW.17-Eshwargouda is his nephew who works as secretary at the dairy. 24.2. On 25.07.2010 at 7.00 p.m. a fight had taken place between PW.13/CW.17-Eshwargouda and accused No.3-Kantesh. He, Honnappa, PW.11/CW.13-Lakappa and his father (PW.5/CW.5-Kadlenni Shivappa) went to the dairy at which point of time accused No.1- Kenchanagoudra Basavarajappa and his children were fighting with PW.13/CW.17- Eshwargouda, which fight was stopped by PW.14/CW.22-Dyamappa and CW.23- Kaddigoudara Bharamappa, they also stopped the fight and

after that they went home.

24.3. At 12 midnight when he was sleeping, he heard commotion, he and his father came out of their home when they came to know that there was a fight going on in his uncle's home. Hence, they went to PW.4/CW.1- Kadlenni Basappa's house. When they entered, accused were assaulting PW.7/CW.11-Manjappa and PW.8/CW.12- Veerappa. When he and his father tried to stop the fight, accused No.6-Ramesh made him fall down and twisted his left leg and hit him with a stick on both his legs. At which point of time, Honnappa @ Kamaraj and PW.11/CW.13-Lakappa came there and tried to stop the fight.

24.4. Accused No.1- Kenchanagoudra Basavarajappa @ Basappa assaulted them, used foul language and stated they would kill them and assaulted Kamaraj with a stick on his head, Accused No.3-Kantesh assaulted Kamaraj with a stone and accused No.2- Girish assaulted him with an axe. When Kamaraj fell down unconscious, PW.11/CW.13-Lakappa tried to help him, accused No.2-Girish and Accused No.3- Kantesh held him, accused No.4-Kariyappa hit PW.11/CW.13-Lakappa with stick on both his legs and his thighs, accused No.5- Rudrappa assaulted PW.11/CW.13-Lakappa with stone, Accused No.3-Kantesh bit the right shoulder of PW.11/CW.13-Lakappa. 24.5. By that time an ambulance had come. Hence, the injured were put in and were taken to Hadagali hospital. Since serious injury was caused to Kamaraj, he was in coma. On 01.08.2010 Kamaraj expired at 2.20 p.m. Since his uncle Kamaraj was hospitalized, he did not get treatment for himself but got treated on 05.08.2010 at Huvina Hadagali Government Hospital and he gave a statement to the police on that day. He identifies MOs.1 to 6.

24.6. In his cross-examination conducted on the same day, he states that he is aware that any injury would have to be treated. When injured whenever he has time, he would get it treated. None of the elders of the village were present in the house of PW.4/CW.1- Kadlenni Basappa when they had gone there. They went into the house of PW.4/CW.1- Kadlenni Basappa through the back door. The front door was open at that time. He has not seen whether the latch of the front door had been broken. There were 5-6 stones fallen in front of the door. The incident went on till 12.20-12.30 a.m. The police persons came to the spot. He did not give any information to the police about the incident at that time. He did not show them the stones. He did not go to the hospital that night. He was in Davanagere hospital for six days. He did not go home. During that time, the police had come and made enquiries as regards the incident. He has given a statement. 24.7. He denies that on 25.07.2010 at 6.00 p.m. PW.13/CW.17-Eshwargoud, PW.7/CW.11- Manjappa and PW.8/CW.12-Veerappa had assaulted Accused No.3-Kantesh. He denies that accused No.1-Kenchanagoudra Basavarajappa was injured at that time. He denies that PW.14/CW.22-Dyamappa and Bharamappa did not stop the quarrel. He denies rest of the suggestions put to him.

25. PW.13/CW.17-Eshwargouda in his examination-in-

chief conducted on 15.11.2014 has stated that; 25.1. PW.4/CW.1-Kadlenni Basappa and PW.1/CW.2-Shantappanavara Basappa are his uncles, PW.7/CW.11-Manjappa and PW.8/CW.12-Veerappa are the children of PW.4/CW.1-Kadlenni Basappa and

PW.1/CW.2-Shantappanavara Basappa, PW.12/CW.14-Basavaraj and CW.15-Nagaraj are his relatives, CW.16-Jatti Basavarajappa is his father, PW.11/CW.13-Lakappa and Kamaraj are his brothers.

25.2. For the past 5-6 years he is working as a secretary at Holalu village dairy. On 25.07.2010 when Accused No.3-Kantesh came and gave the milk he found water mixed in it, which when informed, accused No.3-Kantesh started to abuse him, rest of the accused also stated pointing at him and started abusing him.

25.3. At that time, his brothers and uncles who heard about the same, came there and enquired with them as to what happened. The accused started to abuse them as well. At that time PW.14/CW.22-Dyamappa and CW.23-Gaddigoudra Parasappa who had also come to deliver milk stopped the fight and then the accused went home.

25.4. At 12.30 a.m. that night he heard siren of ambulance and got up, saw the ambulance going towards his uncle PW.4/CW.1-Kadlenni Basappa's house. Hence, he went there and PW.8/CW.12-Veerappa, PW.12/CW.14- Basavaraj, PW.7/CW.11-Manjappa and PW.2/CW.3-Ambli Jayappa were at the house. All of them were putting Kamaraj and PW.11/CW.13-Lakappa in the ambulance. Kamaraj was bleeding profusely from his head and was unconscious. PW.11/CW.13-Lakappa's head was also injured. They were sent to Hadagali Hospital.

25.5. During the said fight he came to know that PW.8/CW.12-Veerappa, PW.7/CW.11- Manjappa, Basavaraj and PW.6/CW.4- Sangana Basappa were also injured and bleeding. He enquired with his uncle PW.4/CW.1-Kadlenni Basappa who informed him that the accused were holding grudge from the dairy incident and hence had assaulted them. Accused No.1- Kenchanagoudra Basavarajappa accused No.4-Kariyappa accused No.6-Ramesh with sticks, accused No.2-Girish with axe and Accused No.3-Kantesh with stone had assaulted PW.7/CW.11-Manjappa, PW.6/CW.4-Sangana Basappa, PW.12/CW.14-Basavaraj, PW.11/CW.13- Lakappa and Kamaraj. On account of the injuries suffered they were shifted to City Central Hospital where Kamaraj was in coma and expired on 01.08.2010 at 2.20 p.m. 25.6. In the cross-examination held on the same day, he has stated that PW.4/CW.1-Kadlenni Basappa is a village leader and villagers listen to his words. He is not affiliated to any political party. He states that the Government has given milk quality testing machine which gives report as regards the quality of the milk. If there is water content in the milk it is sent back and therefore, he had sent back the milk brought by Accused No.3-Kantesh as regards which he has given statement to the police.

25.7. He denies that Accused No.3-Kantesh gives 100 liters of milk and he states that Accused No.3-Kantesh gives 10-15 liters of milk. He states that the house of PW.4/CW.1-Kadlenni Basappa is situated 500 feet from his house. If someone were to stand in front of his house, he could not see PW.4/CW.1-Kadlenni Basappa's house. Vehicles do not go on the road in front of his house. In his house, himself, his father and brothers PW.11/CW.13-Lakappa and Honnappa @ Kamaraj are residing.

25.8. He heard the ambulance sound and he alone went to the house of PW.4/CW.1-Kadlenni Basappa. At that time there were 10-15 people gathered around there. He cannot give the names of those persons. At that time 3-4 police persons came there. The police did not make any enquiries. He enquired with PW.4/CW.1-Kadlenni Basappa at 12.45 p.m. as regards the incident. He states that at that time along with the police PW.4/CW.1-

Kadlenni Basappa, PW. 6/CW. 4 -Sangana
Basappa, PW. 8/CW. 12 -Veerappa,
PW. 7/CW. 11 -Manjappa and PW. 12/CW. 14 -

Basavaraj were there. The police did not make enquiry with PW.4/CW.1-Kadlenni Basappa. The police stayed at the spot throughout the night. He did not inform the police about what his uncle PW.4/CW.1- Kadlenni Basappa has told him. He went back home and slept.

25.9. He admits that when anyone in the house is grievously injured no one would go to sleep in the house. He states that on the next day morning the police came to PW.4/CW.1- Kadlenni Basappa's house. The police did not call him and make any enquiry. He states that he did not go to the house of PW.4/CW.1-Kadlenni Basappa. From 25th to 31st he used to go to the hospital and make enquiries about his brothers. The police did not make any enquiries with him. He denies rest of the suggestions put to him.

26. PW.14/CW.22-Dyavappa in his examination-in-

chief conducted on 15.11.2014 states that; 26.1. He knows PW.13/CW.17-Eshwargouda who is the secretary at Holalu village dairy. He also sells milk there. CW.23-Bharmappa is his uncle. On the date of incident when he went there at 7.00-7.30 p.m., he saw Accused No.3-Kantesh and PW.13/CW.17- Eshwargouda fighting with regard to some issue with the milk. PW.13/CW.17- Eshwargouda stated that the milk had water mixed in it and Accused No.3-Kantesh was arguing that it is not tampered and to take it as it is. He along with CW.23-Bharamappa stopped the fight and sold his milk and headed home. Next day he found from the people that PW.4/CW.1-Kadlenni Basappa and accused No.1-Kenchanagoudra Basavarajappa had fought at PW.4/CW.1- Kadlenni Basappa's house and two persons were hospitalized for serious injuries. After a week, he came to know that one of them had died.

26.2. In the cross-examination conducted on the same day, he has stated that the dairy tests the quality of the milk by using a machine. Only good quality milk could be accepted, and watered milk was sent back if the machine depicted it to be so. He admits that people used to insist for use of machine to check the quality of the milk, but denies that no machine test was carried out. He states that there were 30-40 people gathered at the spot. They are all from his village. He knows them, but he cannot name them.

26.3. He admits that PW.4/CW.1-Kadlenni Basappa and he belongs to the same caste and the relationship between him and PW.4/CW.1- Kadlenni Basappa is good. He denies rest of the suggestions.

27. PW.15/CW.24-Shivanandappa in his examination-

in-chief conducted on 21.07.2015 has stated that he is the PDO of Holalu Gram Panchayat. He has furnished the property extract of the house of the complainant PW.4/CW.1-Kadlenni Basappa as per the panchayat records. He was not cross- examined.

28. PW.16/CW.26-Dr.Raju G.M. in his examination-in-

chief conducted on 27.07.2015 has stated that; 28.1. He is the medical officer of the City Central Hospital, Davanagere. On 26.07.2010 the injured PW.7/CW.11-Manjappa had come for treatment with one PW.11/CW.13-Lakappa with the history of assault on 25.07.2010. He had examined the deceased Kamaraj on 26.07.2010 and PW.7/CW.11-Manjappa on the same day and noticed the following injuries:

1. Linear abrasion present over the right arm, situated near axilla measuring 7 X 2 cms.

horizontally placed, red in colour.

2. Tenderness and swelling present over the occipital region of scalp.

3. Pattern abrasion present over the left side of the chest situated above the left nipple measuring 3 X 3 cms. circular red in colour due to bite marks.

4. Tenderness and swelling present over the left hand, situated elbow the elbow joint upto the wrist joint, lateral movement restricted.

5. Linear abrasion present over the right side of the back region, situated near outer aspect of axilla, measuring 3 X 1 cms ., red in colour extended from later side of scapula region upto the axilla.

6. Abrasion present over the right side of ears, situated at chin, measuring 1 X 1 cms., 2 in number, linear horizontally placed.

28.2. He states that all the injuries are less than 12 hours. Injury No.1, 2, 3 and 4 are simple and injury No.5 and 6 are grievous in nature. He had taken X-ray of left forearm and noticed fracture of left forearm of olicron. He has issued the wound certificate at Ex.P.6. He states that injury No.2 could be inflicted by teeth bite, injury No.3 can be inflicted by assault with club and injury No.5 could be inflicted assaulting with wooden handle of axe. He states that he treated Kamaraj and noticed sutured wound on left parietal region of scalp measuring 3 x 1 cms. which was fresh in nature. He had issued MLC marked at Ex.P.7. He has examined the axe and stated that the axe could

have caused the injury. His opinion has been marked as Ex.P.8. 28.3. In his cross-examination held on the same day, he admits that there is overwriting of date in Ex.P.7 and no initial has been put on it. He has stated that the injuries were inflicted while the victim was asleep as per the say of the brother of the victim. The patient was treated in Hadagali PHC earlier. He has not secured the report from the PHC. He states that PW.10/CW.10-Rajashekhar had brought the injured PW.7/CW.11-

Manjappa. He has denied all other suggestions.

29. PW.17/CW.25-Dr.Manjula is the senior specialist in Chitageri Hospital. In her examination-in-chief conducted on 21.07.2015, she stated that; 29.1. she received requisition from Hadagali Police Station for conducting postmortem of the body of Kamaraj @ Honnappa which she conducted and given a report. She found the external injuries on left side of the scalp extending from left frontal to left post auricular area crossing over left temporal parietal area. She found sutured wound of 15 inch over left side of scalp extending from left frontal to left post auricular area crossing over left temporal parietal area. A triangular piece of bone was lying freely under the scalp skin with burn holes at all 3 corners over left temporal region.

29.2. In the cross-examination on the same day, she has stated that a person in coma cannot swallow any food. She has not seen the previous line of treatment of the deceased before conducting the postmortem. She has seen the sutured wound while carrying out the postmortem. She has denied that she is deposing falsely for political purposes.

30. PW.18/CW.27 Dr. L.N.Lingegouda is working in the Forensic Science Lab, Davanagere in his Examination-in-chief conducted on 22.07.2015, he has stated that:

30.1. On 24.08.2018 the police had sent two sealed bags with CW.31-P.C. Bennikoppa. He has inspected the seal and opened them. Item No.1 was an axe and item No.2 was a baniyan. He found the human blood of blood group 'A' and after testing the items the same were sent back with a report. The report is identified as Ex.P.10 and he identifies MO.6 & MO.7.

30.2. In the cross-examination conducted on the same day, he admits that the report does not indicate the date on which he has tested the items, he has stated that he has packed the Baniyan and sent it back. He states that, the packet which was shown to him is not the one in which he has sent the items. He states that, the packet had a seal on it, which now is not seen. He does not remember on which side of the blade of the axe was blood stained.

31. CW.19/PW.29 M.Manjunath, Police Constable at Hadagali Police Station who delivered the FIR to the Court, he has stated that, on 26.07.2010 the PSI called him at

3.00 a.m. and asked him to deliver the FIR since there were no bus service, there was a delay. He took the bus at 5.30 a.m. and delivered the FIR and complaint to the Court.

He identifies the FIR at Ex.P.11 and complaint at Ex.P.3. He states that, to include Section 307 of IPC, he has delivered the letter from the police station to the Court. On 01.08.2010 to include Section 302 another requisition was submitted as per Ex.P.13. His cross-examination was conducted on the same day. He states that, though there was facility of giving vehicle, they have not given the vehicle, he does not have two wheeler, other persons have two wheeler. He states that, it takes 2-3 hours by walk to the Court, but on a bike, it takes 45 minutes. He further states that, the delivery of FIR was made at 6.00 a.m. The same is not there in the statement, but can be found in the FIR.

32. PW.20/CW.32 Shadakshari Patil in his examination-in-chief, conducted on 06.08.2015 has stated that;

32.1. He was working as a ASI at the Hirehadagali outpost station. On 25.07.2010 at 1.00 a.m., the complainant had given a written complaint which he had sent to the Hirehadagali police station with Police Constable Mahantesh as per Ex.P.3. Since PSI was not available on 30.07.2010 he took charge as the Station Head, taken up further investigation in Crime No.41/2010, recorded the statement of PW.3/CW.7- Shantappanavara Chandrappa, PW.5/CW.5- Kadlenni Shivappa, PW.6/CW.4-Sangana Basappa, PW.2/CW.3-Ambli Jayappa and CW.6-Shantappanavara Basavarajappa. He wrote a letter for including Section 302 of IPC. On 01.08.2010, the Police Constable had called him to inform him about the demise of the deceased. Hence, he wrote a letter to include Section 302 of IPC. Since the offence was grave, he was handed over to the PW.22/CW.34-Prakash Rathod, CPI. In the cross-examination conducted on the same day, he states that PSI would take over the investigation. Before taking over he would have seen the investigation made earlier. Upon receiving the information, he did not send any police men to the spot at 12.00 a.m. He has not sent anybody at 10.30 p.m. He had not gone to the spot.

32.2. He went to the spot on the next day morning at 10.00 a.m. He had not gone inside the house, but had gone to the place of crime. When he had gone there, the family members of the complaint were present. He did not make any inquiry with the complainant. He saw the scene of crime. He did not see any material objects at that time. He does not know if the PSI had enquired with PW.2/C.W.3-Ambli Jayappa about the incident. The PSI stayed there, and he went elsewhere. He does not know of PSI enquiring with PW.2/CW.3-Ambli Jayappa and PW.6/CW.4-Sanaga Basappa at recording on the laptop.

32.3. He does not know the contents of the complaint. He admits that in the complaint, it is not stated that the accused had assaulted complainant. From the investigation documents, he came to know that the door of the complainant's house had been broken. He has not questioned the investigation done by his superior. Since Kamaraj was in Coma he did not go the hospital to record his statement. The police were assigned to guard the injured.

32.4. He does not know if PW.2/CW.3-Ambli Jayappa's Sister is married to PW.6/CW.4- Sanga Basappa. He did not ask about the relation of various witnesses. PW.6/CW.4- Sangana Basappa had not told him that he was injured and wanted to seek treatment. From 26th to 30th July 2010, he had not gone to the spot of the incident. The outpost is at 14 kilometers from the main station and main station is 17 kilometers from the Court and it takes 30 minutes to go to the Court on a motorcycle. He took the statement on the laptop from 10.30 to 3.30 and gave letter to the Police Constable for inclusion of Section 302 at 4.30 p.m.

33. PW.21/CW.33 D. Hanumantappa is the PSI of Hirehadagali police station in his examination-in-Chief he has stated that;

33.1. On 26.07.2010 at 3.00 a.m., the ASI had forwarded the complaint from the outpost which he registered as Crime No.41/2010 and then sent the FIR to the Court and he identifies the Ex.P.3 to be the complaint and PW.11/CW.13-Lakkappa to be the FIR. He has sent ASI, Dharmappa and Police Constable Chandrashekar to arrest the accused.

33.2. In the afternoon at 2.00 to 2.45 p.m. on the basis of the spot shown by the complainant in the presence of the witnesses the panchanama was drawn as per Ex.P.1. One axe and two blood stained banyans as per MO.1 to MO.8. He identifies the rough sketch as per Ex.P.2.

33.3. He handed over the investigation to ASI. On the same day, the investigation was conducted. He says that the FIR was sent to the Court at 9.30 a.m. He met the ASI at the spot in the morning when the complainant and his family were there, he was shown the spot and he examined it. The wooden sticks were lying there, he did not take any statement. PW.2/CW.3-Ambli Jayappa has not stated which accused used which items to assault. He enquired as to how the incident had happened. He does not remember the names of the witnesses. He admits that the name of the person from whom the enquiry is made is required to be stated.

33.4. He was at the house of the complainant at 9.00 a.m. He did not draw a panchanama in the morning since he came to know that the fight was a verbal fight. An ASI and two Police Constables were assigned to the complainant's house. He admits that the assault by the accused using an axe is not mentioned in the complaint.

33.5. He did not try and get treatment to the injured PW.6/CW.4-Sangana Basappa, but came to know that they have been taken to the hospital, he does not know the name of the hospital, he denies that he had added the line about the axe in Ex.P.3.

33.6. He states that, the door was broken at the spot, but he has not shown it in the panchanama, nor he has taken the full statement of the complainant. He has not enquired with any eyewitness. He admits that, PW.2/CW.3-Ambli Jayappa has not given any statement that he saw the incident. He admits that, during panchanama no witness has stated about the axe. He has not seized the handle of the axe. He states that Banyan was not fully stained by blood, but stained here and there. He admits that, the sketch does not have a date.

34. PW.22/CW.34 Prakash Rathod in his examination-

in-chief on 06.08.2015 has stated that; 34.1. He was the CPI of Huvina-hadagali. When he was at the station, ASI had handed over the further investigation to him on 01.08.2010 at 5.30 p.m. since the injured had died, he went to the Davanagere C.J.Hospital, received the death certificate from Police Constable Chandrakant(CW-30), visited the mortuary and conducted panchanama in the presence of witnesses as per Ex.P.4. Thereafter, he recorded the statement of PW.10/CW.10- Rajashekhar and sent the body with Police Constable Chandrakant for postmortem. Thereafter, the body was handed over to the relatives. He states that on 02.08.2010 he visited the station, received the receipt from CW-30-Police Constable Chandrakant for having handed over the body.

34.2. He went to the spot and examined it. he was informed that the accused Nos.2 to 5 were hospitalized in a hospital in Haveri. He sent ASI Nagappa with CW.30-Police Constable Chandrakant and two Police Constable of Ittagi, to Haveri at 4.00 p.m., the accused were brought before him, they were arrested and interrogated and sent to the Court. On 05.08.2010, he recorded the statements of PW.7/CW.11-Manjappa, PW.8/CW.12- Veerappa, PW.11/CW.13-Lakappa, PW.12/CW.14-Basavaraj, CW.15-Nagaraj, CW.16-Jatti Basavarajappa, PW.13/CW.17- Eshwargouda and further statement of the complainant PW.4/CW.1-Kadlenni Basappa. 34.3. He had sent his personnel to apprehend the absconding accused Nos.1 to 6, sent MO.1 to MO.8 to FSL on 25.08.2010, received the wound certificate from Davanagere Hospital on 20.10.2010 as per Ex.P.6 received FSL report on 22.11.2010 as per Ex.P.10. Asked the opinion to the Doctor as regards the axe. 34.4. As per Ex.P.8 received wound certificate from Hadagali Hospital of PW.11/CW.13-Lakappa, PW.8/CW.12-Veerappa and PW.12/CW.14- Basavaraj as per Ex.P.14, Ex.P.15, Ex.P.16, thereafter he submitted the charge-sheet. He can identify accused No.2-Girish, accused No.4-Kariyappa and accused No.6-Ramesh and stated that, he can identify the absconded accused No.1-Kenchanagoudra Basavarajappa and accused No.2-Girish. 34.5. In the cross-examination conducted on the same day, he has stated that neither in the complaint nor in the panchanama, there is a mention of the accused having hit with an axe. He states that it is possible to have a wound of 15 inch, if hit by an axe. He states that, the axe is not 15 inch and the blade is not that big. He states that, during the panchanama no blood stains were seen. He has taken the Baniyan sized by the PSI, he does not know to whom the Baniyan belongs to. He did not personally send the items to FSL, but the Baniyan belongs to the deceased.

34.6. He states that, the main entrance of the house faces east. He did not go to the spot as soon as possible since the PSI was conducting the investigation and as it was not a serious offence. He does not know which Baniyan belongs to whom and or the blood belongs to whom.

34.7. He has taken the samples of PW.11/CW.13- Lakappa and Kamaraj separately. He does not know if PW.2/C.W.3-Ambli Jayappa and PW.6/CW.4-Sangana Basappa are the relatives of the complainant and if C.W.30- Chandrakanth,PC is related to PW.11/CW.13- Lakappa.

34.8. He has not enquired from the villagers since they did not come forward to give the statement. He has not taken any action against the villagers. He does not know if the complainant had gone to the hospital to see Kamaraj and PW.11/CW.13-Lakappa. He does not know how many bolts and

latches were there on the door. He does not know if the complainant and the accused have political rivalry. He has not conducted any panchanama at the Dairy as he felt it was not necessary.

35. PW.23/CW.28 Dr. Shivakumar, in his examination-

in-chief on 20.08.2015 has stated that he was serving as a Medical Officer at Hadagali. The injured PW.11/CW.13-Lakappa was brought by P.C. 108 and examined by him on 26.07.2010 at 2.10 a.m. when he noticed laceration of 3X2 cm. of occipital region. He noticed several lacerations which are similar in nature and as such he issued a wound certificate as per Ex.P.14. He states that, there were lacerations and contusions. He states that, on 05.08.2010 at 4.00 p.m, he has examined the injured PW.8/CW.12-Veerappa, brought in by P.C.280 of Hadagali Police Station. All his injuries were simple in nature. He has issued wound certificate as per Ex.P.15. On 05.08.2010 he has examined injured PW.12/CW.14-Basavaraj brought in by P.C.280 to Hadagali Police Station. All his injuries were simple in nature and he has issued wound certificate at Ex.P.16. In the cross- examination conducted on the same date he has stated for any injured was accompanied by him. He sees no entry of the name of the patient accompanying PW.11/CW.13-Lakappa. He states that, he has not put his initial on the overwriting of the day in Ex.P.14. He admits that, he has not mentioned the time of the incident.

36. PW.24 who is the Police Constable 280 has stated that on 26.-07.2010 at 1.00 a.m., the complainant and come to the station with a written complaint and PW.20/C.W.32-Shadakshari Patil, ASI had asked him to take it to the station, as such, he delivered it to the station at 3.00 a.m. and registered Crime No.41/2010. He identifies the complaint as Ex.P.3. He has denied the rest of the suggestions.

37. It is on the basis of the above evidence which is on record, that this Court would have to ascertain as to whether the order of conviction and sentence passed by the trial Court is proper and correct after reappreciating the said evidence.

38. From perusal of the above evidence, it is seen that PW₁/CW₂-Shanthannanavar Basappa is a panch witness, PW.2/CW.3-Ambli Jayappa is also an eye witness, PW.9/CW.8-Honnappa is an inquest panch witness, PW.15/CW.24-Shivanadappa is the Panchayat Development Officer, PW.16/CW.26- Dr.Raju is a Medical Officer at City Central hospital, PW.17/CW.25-Dr.Manjula is a Senior Specialist at Chigateri hospital, PW.18/CW.27-Dr.Lingegowda is a scientific officer at the Regional Forensic Science Laboratory, PW.19/CW.29-Manjunath is a Police constable at Hatagali police station, PW.20/CW.32- Shadakshari Patil is the Assistant Sub-inspector who recorded the complaint, PW.21/CW.33- D.Hanumantappa is the first investigating officer before the charge for the offence under Section 302 of IPC were added, PW.22/CW.34-Prakash Rathode is the Circle Inspector of police who took up investigation subsequent to the charge under Section 302 of IPC being added, PW.23/CW.28- Dr.Shivakumar is the Medical officer at Huvinahadagali Government hospital, PW.24- Mahantesh Gudli is a police constable at Holalu.

39. PW.2/CW.3-Ambli Jayappa apart from being a panch witness is also a eye witness, PW.3/CW.7-Shantappanavara Chandrappa, PW.4/CW.1- Kadlenni Basappa, PW.5/CW.5-Kadlenni Shivappa and

PW.6/CW.4-Sangana Basappa are eye witnesses to the incident. PW.4/CW.1-Kadlenni Basappa is also the complainant. PW.7/CW.11- Manjappa, PW.8/CW.12-Veeranna, PW.11/CW.13- Lakappa and PW.12/CW.14-Basvaraj apart from being eye witnesses are also the injured. PW.14/CW.22-Dhyamappa is the eye witness for the dairy incident.

40. The case of the prosecution is that at 7 p.m on 25.7.2010 there was an altercation in front of the milk dairy between PW.13/CW.17-Eshwar Gouda and accused No.3 Kanthesh and in pursuance thereof, at 12 midnight, the accused with an intention of committing the murder of PW.13/CW.17-Eshwar Gouda had barged into the house of the complainant- PW.4/CW.1-Kadlenni Basappa. After barging into the house, they assaulted the persons residing in the house as also the deceased Kamaraj causing his death, apart from causing grievous injuries to PW.7/CW.11-Manjappa, PW.8/CW.12-Veeranna, PW.11/CW.13- Lakappa and PW.12/CW.14-Basvaraj. It is on this basis that criminal proceedings were set in motion.

41. The evidence on record as also the investigation which has been conducted leaves much to be desired. Though the knowledge of the incident and the description of the incident before the dairy at 7 pm on 25.7.2010 has been spoken of by almost all the witnesses, there is a slight discrepancy as to the manner in which the incident occurred inasmuch as some of the witnesses have mentioned about the altercation between accused No.3-Kantesh and PW.11/CW.13-Lakappa, the discrepancy is as regards the father of accused No.3-Kantesh viz., accused No.1-Kenchanagoudara Basavarajappa being pushed into the drain or not.

42. There is serious discrepancy in the time at which the incident occurred, as regards which the complaint has been filed, is stated to have occurred. PW.3/CW.7-Shantappanavara Chandrappa has stated that the incident occurred between 10.30 p.m. to 12.30 at night. During the course of cross-examination, PW.3/CW.7- Shantappanavara Chandrappa, PW.4/CW.1- Kadlenni Basappa, PW.5/CW.5-Kadlenni Shivappa, PW.6/CW.4-Sangana Basappa, PW.10/CW.10- Rajashekar, PW.7/CW.11-Manjappa, PW.8/CW.12- Veeranna, PW.11/CW.13-Lakappa and PW.12/CW.14-Basavaraj have stated that the incident occurred at 12 midnight inasmuch as they contend that the incident commenced at 12 midnight. All the witnesses more or less have stated that the altercation took place for half an hour to one hour from the time it commenced i.e. to say that the incident ought to have gone on until 12.30 or 1 a.m on 26.07.2010. The complaint was however recorded and/or registered at 1 a.m. on 26.07.2010.

43. The say of the complainant-PW.4/CW.1-Kadlenni Basappa is that after the altercation occurred, somebody had called an ambulance and the police who had come there. He further states that he and his younger brother PW.5/CW.5-Kadlenni Shivappa had gone to the police outpost at 1 a.m. to lodge a complaint, the details of which have been given by PW.4/CW.1-Kadlenni Basappa and written down by PW.5/CW.5-Kadlenni Shivappa. If the statement of the witnesses as regards the duration of the altercation that took place is to be believed, as per PW.2/CW.3-Ambli Jayappa, the altercation lasted for 30 minutes, PW.4/CW.1-Kadlenni Basappa states that it lasted for 45 minutes, as per PW.5/CW.5-Kadlenni Shivappa it lasted for an hour, as per PW.6/CW.4-Sangana Basappa it lasted for 45 minutes, PW.7/CW.11-Manjappa states that it lasted for 45-60 minutes, as per PW.12/CW.14-Basvaraj it lasted till 12.20 a.m. All of them have stated that the incident started at 12

midnight in the examination in chief, in the cross- examination the duration of the altercation varies from one person to the other. Even if we were to assume that the least amount of 30 minutes had taken place in the altercation, it is unimaginable that within that span of time the police and the ambulance would have arrived at the spot, more so when the police station is stated to be more than half an hour from the house of PW.4/CW.1- Kadlenni Basappa, which is the scene of the crime.

44. It is only thereafter that PW.4/CW.1-Kadlenni Basappa and PW.5/CW.5-Kadlenni Shivappa are stated to have gone to the police station to lodge their complaint, which being the Holalu Police outpost and is situated nearly 300-400 meters from the Holalu village and from the Police out post, the Police Station is about 14 kilometers away. The timelines which have been stated by all the witnesses as regards the commencement of the altercation, ending of the altercation, arrival of the police to the spot and registration of the complaint at 1 a.m is replete with contradictions. The only timeline which can be taken to be without any doubt is the time at which the complaint was lodged, since the time of 1 a.m. is recorded in the said complaint. If any other timeline is to be considered, the same would not make any sense and would defy logic. Therefore, the evidence of the witnesses as tendered before the trial Court as regards the time when the incident commenced to how long the altercation took place is suspect.

45. The time at which the police came to the spot is also replete with contradictions, inasmuch as PW.2/CW.3-Ambli Jayappa states that the police came when accused were assaulting PW.11/CW.13-Lakappa, PW.3/CW.7- Shantappanavara Chandrappa states in his cross examination that police came at 12 midnight, PW.4/CW.1-Kadlenni Basappa also states that police came at 12 midnight, after the death of Kamaraj. PW.6/CW.4-Sangana Basappa in his cross-examination states that police came at 12 midnight, PW.7/CW.11-Manjappa also states that the police came at 12 midnight. If the occurrence of the incident started at 12 midnight, the question of police coming to the spot at 12 midnight itself would not arise. PW.11/CW.13-Lakappa has stated that the police came at 1.30 a.m. if that be so, then the question of registration of complaint at 1 a.m. is also suspect. PW.12/CW.14-Basvaraj has stated that the police came at 12.30 midnight, PW.20/CW.32-Shadakshari Patil has stated that after coming to know of the incident he had sent constables but he did not go there, he went to the spot at 10 a.m. the next day. PW.21/CW.33-D.Hanumatappa had gone to the spot at 2 p.m. on the next day.

46. There is no evidence on record as to who informed the police and when the said information was given to the police about the incident. As regards the time at which the ambulance came, PW.13/CW.17-Eshwar Gouda has stated that he woke up to the sound of the ambulance going towards PW.4/CW.1-Kadlenni Basappa's house and rushed there. PW.5/CW.5-Kadlenni Shivappa has stated that the ambulance came when the altercation was going on and as soon as the ambulance came, the accused left the various material objects used to assault and ran away i.e. the ambulance has come to the spot at the time when the altercation was going on and the assault was still in progress. These statements of PW.5/CW.5-Kadlenni Shivappa and PW.13/CW.17- Eshwar Gouda also do not inspire any confidence as regards the time at which the ambulance came to the spot. As regards whether the ambulance arrived before or after the police had arrived, PW.13/CW.17-Eshwar Gouda has stated that he woke up to the sound of the ambulance and went to the scene of crime and saw 3 to 4 police personnel already at the spot, that is to say that he woke up

at 12.30 and immediately rushed to the spot and police were already at the spot. PW.2/CW.3-Ambli Jayappa, in his cross- examination, has stated that the police came to the spot at 12 or 12.30 and stayed till 3 a.m.

47. PW.4/CW.1-Kadlenni Basappa has stated that after the altercation was over and the ambulance had come, Kamaraj was taken to the hospital, thereafter, the police came to the spot, that is to say that the police came to the spot after the altercation. PW.8/CW.12-Veeranna has stated that there were one or two police who were present when the ambulance came to take Kamaraj to the hospital. PW.11/CW.13-Lakappa has stated that the police accompanied the victims/injured to the hospital at Davanagere. However, there is no indication or evidence which has been led about the police having accompanied the injured nor is the evidence of those police personnel on record. Therefore, from the evidence on record, there appears to be a huge lacuna and/or contradiction as regards both the time at which the ambulance came, the time at which the police came, the time at which the altercation commenced and ended.

48. The other issue that we find shocking in the entire matter is as regards the recordal of statement of each witness, inasmuch as PW.2/CW.3-Ambli Jayappa has stated that he did not observe the police taking statement of anyone. PW.3/CW.7- Shantappanavara Chandrappa has stated in his examination-in-chief that police had taken the statements, but in cross-examination he has denied police having taken his statement. PW.4/CW.1-Kadlenni Basappa has stated that he has given a statement to the police at 1 a.m. at the police station and thereafter, on the next day, at the time when mahazar was conducted. PW.5/CW.5-Kadlenni Shivappa has stated that he has not given any statement nor have the police enquired with him or his sons or his nephews, but they had enquired only with PW1/CW2-

Shanthannanavar

Basappa,

CW.6 -

Shantappanavara

Basavarajappa,

PW.2/CW.3 -

Ambli Jayappa and PW.3/CW.7-Shantappanavara Chandrappa. PW.6/CW.4-Sangana Basappa has stated that his statement was recorded on 30.07.2010. PW.7/CW.11-Manjappa gave a statement on 06.08.2010 after he was discharged from the hospital on 05.08.2010. PW.8/CW.12- Veeranna has stated that his statement was recorded on 05.08.2010. PW.8/CW.12-Veeranna though has stated that on the next day statements were recorded of all other witnesses, he has clearly stated that his statement was not recorded. PW1/CW2-Shanthannanavar Basappa has stated that he has given his statement on 02.08.2010, but he does not know when the statements of other witnesses were recorded. PW.12/CW.14- Basvaraj has stated that he had showed the Material Objects used in the altercation, but he had not been enquired with in this matter.

49. PW.20/CW.32-Shadakshari Patil has stated that the statements of PW.3/CW.7-Shantappanavara Chandrappa, PW.5/CW.5-Kadlenni Shivappa and PW.6/CW.4-Sangana Basappa were recorded between 10.30 a.m to 3.30 p.m. on 26.07.2010. PW.22/CW.34-Prakash Rathode has stated that he had recorded the statement of PW.10/CW.10-Rajashekar Jatti on 01.08.2010. He went to the spot on 02.08.2010 and on 05.08.2010 he had recorded the statements of PW.7/CW.11- Manjappa, PW.8/CW.12-Veeranna, PW.11/CW.13-Lakappa, PW.12/CW.14-Basvaraj, CW.15-Nagaraj, CW.16-Basavarajappa and PW.13/CW.17-Eshwar gouda. On 06.08.2010, he has recorded the statement Of CW.18-Gouravva, CW.19-Roopu, CW.20-Manjulamma, CW.21-Nagamma and PW.14/CW.22-Dyamappa; and further statement of PW.3/CW.7-Shantappanavara Chandrappa, PW.7/CW.11-Manjappa and PW.6/CW.4-Sangana Basappa on the said date.

50. Thus, it is rather shocking that the initial investigating officer viz., PW.21/CW.33-D.Hanumantappa has not recorded the statement of any of the witnesses on the date of occurrence of the event/crime or immediately thereafter. It is only PW.22/CW.34-Prakash Rathode who has recorded the statements of witnesses as aforesaid, after he took over the investigation, by then nearly four days had passed since the incident had occurred.

51. It is also shocking to observe that PW.1 to 14 are all family members. Apart from the family members of the complainant no other witnesses have been examined. PW1/CW2-Shanthannavar Basappa is stated to have come along with the complainant to the court during his deposition. PW.2/CW.3-Ambli Jayappa is the brother-in-law of PW.4/CW.1-Kadlenni Basappa. PW.3/CW.7-Shantappanavara Chandrappa is stated to know PW.4/CW.1-Kadlenni Basappa from the year 2006 and has a good relationship. PW.4/CW.1-Kadlenni Basappa is the uncle of PW.13/CW.17-Eashwargouda, PW.5/CW.5-Kadlenni Shivappa is the brother of PW.4/CW.1-Kadlenni Basappa, PW.6/CW.4-Sangana Basappa, PW.7/CW.11- Manjappa and PW.8/CW.12-Veeranna are the sons of PW.4/CW.1-Kadlenni Basappa. PW.9/CW.8- Honappa is the son-in-law of PW.4/CW.1-Kadlenni Basappa. PW.10/CW.10-Rajashekhar, PW.11/CW.13-Lakappa and PW.13/CW.17- Eashwargouda are the nephews of PW.4/CW.1- Kadlenni Basappa.

52. Apart from these interested persons, no evidence of any third party has been recorded by either the investigating officer or any witness has been presented before the court.

53. As mentioned and observed above, it is only interested witnesses and/or family members who had been examined as witnesses during the course of the trial. This is despite all the witnesses having deposed that they were several other third parties namely, villagers who were present at the spot during and after the incident.

54. PW.2/CW.3-Ambli Jayappa has stated in his examination-in-chief that there were about 10 to 15 persons who were present during the incident and in his cross-examination, he has stated that there were about 25 persons from the village who were present at the time when the ambulance had come to the spot. PW.3/CW.7- Shantappanavara Chandrappa has stated in his examination-in-chief that there were 15 persons at the scene of crime when the police came and there were 15 to 20 persons present inside the house of PW.4/CW.1-Kadlenni Basappa. PW.4/CW.1- Kadlenni Basappa

himself has stated that 15 to 20 persons had gathered outside his house when the police arrived. PW.5/CW.5-Kadlenni Shivappa has stated that there were about 20 to 25 persons gathered at the spot at that time. PW.6/CW.4- Sangana Basappa has stated that there were about 11 to 12 persons, PW.7/CW.11-Manjappa has stated that there were 25 persons present, PW.11/CW.13-Lakappa has stated that many people had gathered, PW.13/CW.17-Eashwargouda has stated that there were about 15 to 20 people who were gathered at the site.

55. If that be so, we are rather shocked that statements of those persons were not recorded either by PW.21/CW.33-D.Hanmantappa when he visited the spot or by PW.20/CW.32-Shadakshari Patil. These witnesses would have been material witnesses, but their statements have neither been recorded nor have they been examined in the matter, leaving the recordal of statements to be that of only the interested witnesses.

56. One of the allegations is that the accused barged into the house of PW.4/CW.1-Kadlenni Basappa, by breaking open the door and resultantly breaking the door's latches. PW.2/CW.3-Ambli Jayappa has stated that there are two entrance doors to the house, but the doors were not broken. He states that the back door was open but he has not observed if the front door had been opened. PW.4/CW.1-Kadlenni Basappa has stated that the back door was locked, but the accused had broken open the back door and entered the house. In the cross-examination, he has stated that the accused broke open the front door and entered the house while he was coming from the back door. PW.6/CW.4-Sangana Basappa has stated that the back door's latch was broken. PW.7/CW.11-Manjappa has stated that front door did not seem to be broken, but he has not seen if the back door latch was broken, but when he woke up both the doors were open. PW.8/CW.12-Veeranna has stated that both the doors were open but were not broken, PW.11/CW.13-Lakappa has stated that he had entered the house through the front door.

57. There is again the contradiction in this, inasmuch as the allegation against the accused is that the accused had gathered in front of the house of PW.4/CW.1-Kadlenni Basappa and thereafter barged into the said house and assaulted PW.4/CW.1-Kadlenni Basappa and his family members. If the accused had gathered in front of the house and barged into the house, the question of the back door being broken would not at all arise. It would be the front door which should have been broken and/or latch of the front door which ought to have been broken. Even in this there is a contradiction, leaving the evidence of the witnesses on this aspect suspect.

58. One of the most important issues being as regards the injuries caused and the treatment given. PW.2/CW.3-Ambli Jayappa has stated that the deceased-Kamaraj, PW.11/CW.13-Lakappa, PW.7/CW.11-Manjappa were taken in the ambulance to the Hadagali Government Hospital and then to Davanagere hospital, but he has stated that he had not visited any of the injured or the deceased at the hospital.

59. PW.13/CW.17-Eshwar gouda who is the brother of the deceased has stated that his other brothers, PW.11/CW.13-Lakappa and the deceased Kamaraj were taken to the Hadagalli Hospital, but however, he as stated that after the ambulance left, he went back home and slept.

60. PW.3/CW.7-Shantappanavara Chandrappa has stated that, PW.11/CW.13-Lakappa was taken to the Hadagalli hospital, the deceased Kamaraj was taken to Davanagere hospital. PW.4/CW.1-Kadlenni Basappa has stated that injured were taken to the Hadagalli hospital and deceased Kamaraj was taken to Chigateri Hospital and then to City Center Hospital, Davanagere, but he has not visited either the injured or deceased.

61. PW.5/CW.5-Kadlenni Shivappa has stated that PW.11/CW.13-Lakappa and deceased Kamaraj were sent in the ambulance, first they went to Hadagalli Hospital and then to Davangere Hospital after first aid, but he also not visited either of them at the hospitals. He has stated that thereafter PW.12/CW.14-Basvaraj and PW.8/CW.12-Veeranna went to the hospital for treatment. PW.6/CW.4-Sangana Basappa has stated that PW.11/CW.13- Lakappa and the deceased were sent in the ambulance first to Hadagalli Hospital then to Davangere hospital, PW.7/CW.11-Manjappa has also made similar depostion. PW.10/CW.10- Rajashekhar is the only person who is stated to have visited the injured PW.11/CW.13-Lakappa and deceased Kamaraj at Davangere Hospital and stayed there from 27.07.2010 to the 1.08.2010. PW.11/CW.13-Lakappa has also stated that he and his brother were taken in an ambulance to Hadagalli Hospital and thereafter to Davangere Hospital, where PW.10/CW.10-Rajashekhar is stated to have visited them. PW.12/CW.14- Basvaraj has stated about PW.11/CW.13-Lakappa and deceased Kamaraj being first taken to Hadagalli Hospital and thereafter to Davanagere Hospital. He has also stated that he was admitted in the hospital for 6 days.

62. As observed above, PW.13/CW.17-Eshwar gouda is the brother of the deceased Kamaraj and is stated to be the fulcrum of the entire incident, inasmuch as it is on account of the incident/altercation which occurred at 7.00 PM on 25.07.2010 between PW.13/CW.17-Eashwargouda and accused No.3- Kantesh at the dairy of which PW.13/CW.17-Eshwar gouda is the Secretary. As aforestated, after his brothers were taken in the ambulance to the hospitals, he has stated that he went back to his home and slept. He also stated that he has not visited his brothers at the hospitals and he came to know about the death of his brother Kamaraj only on 01.08.2010. This evidence on record, apart from establishing the contradiction between the various witnesses also establishes that none of the witnesses had even bothered to attend to the injured, more particularly knowing that the deceased was fatally injured and in a dire state.

63. The deposition as regards the occurrence of the event, wherein the so-called eyewitnesses have deposed as regard the manner of assault having been committed on the deceased, which ought to have indicated to them that the assault is fatal in nature, since there is a head injury. However, despite the same they let the injured be taken in an ambulance without anybody accompanying the said injured and thereafter none of them bothered to visit the hospital to enquire about the status of the said injured except for PW.10/CW.10- Rajashekhar brother of the injured PW.11/CW.13-Lakappa and deceased Kamaraj. As aforestated, PW.13/CW.17-Eshwar gouda has not done anything at all in facilitating the injured and the deceased.

64. All these facts would lead to an irresistible conclusion, that the time at which incident is stated to have occurred, the arrival of the ambulance, the arrival of the police, the shifting of the injured to the hospital, the treatment given to the said injured as deposed to by all the witnesses is suspect.

65. Coming to the medical evidence on record, PW.23/CW.28-Dr.Shivakumar has stated that, he had examined PW.11/CW.13-Lakappa on 26.07.2010 and has examined PW.8/CW.12- Veeranna and PW.12/CW.14-Basvaraj on 05.08.2010 who were accompanied by PC 280 for treatment. There is no record of medical treatment or examination of PW.8/CW.12- Veeranna and PW.12/CW.14-Basvaraj from 25.07.2010 to 04.08.2010, apart from being examined around 10 days after the incident.

66. The nature of injuries caused to the deceased is also different in different reports, inasmuch as the treating doctor has stated that the wound is measuring 7x1 cms on the scalp of the deceased, whereas the post-mortem report indicates that the wound is 15 inches. Apart therefrom, the post-mortem report of the deceased Kamaraj indicates that the sutured wound of 15 inches in size, on left side of the Scalp where a triangular piece of the bone was lying freely under the scalp skin with burn holes in three corners over the left temporal parietal area. It is not understood if the deceased Kamaraj was treated in hospital for 5 days, as it begs the question as to how a triangular piece of bone could just have been freely lying under the scalp skin after 5 days.

67. As regards the contents of the intestine, the post-

mortem report indicates that the intestine was intact and contained semi-digested food. The incident having occurred 25/26.07.2010 and post- mortem was conducted on 02.08.2010 after a gap of nearly 6 days, the question of semi digested food being present in the intestine does not make any sense. More so when the deceased Kamaraj is stated to have been in a coma during all this period, was not conscious and had not had any solid food during that period of time.

68. This being the contents of the small intestine, the large intestine is saidt to have contained fecal matter. This is also suspect for the reason that the said fecal matter was present after 6 days of the injury.

69. Thus, the existence of semi digested food in the small intestine and fecal matter in the large intestine of a person being in coma for a period of six days cannot be accepted. There are no records produced as regard the treatment provided to the deceased while at the City Central Hospital, Davangarere, the medicines administered, the treatment given nor the case history are marked in evidence, which is a big lacuna in the entire investigation and prosecution's case.

70. Juxtaposing the post-mortem report with the wound certificate at Ex.P7 indicates that the date and time of the incident is stated to be 25.7.2010 at 11.00 p.m and he was examined in the hospital at 6.15 a.m after having been admitted at 5.45 a.m by PW.11/CW.13-Lakappa, who is the younger brother of the deceased Kamaraj and at that time the said PW.11/CW.13-Lakappa had informed the hospital authority that the assault occurred at 11.00 p.m at the residence of the deceased Kamaraj when he was said to be asleep in his residence and attacked by accused herein.

71. This wound certificate recorded at an undisputed point of time categorically indicates that the incident is stated to have occurred at 11.00 p.m and the accused are stated to have attacked the deceased Kamaraj in his house while he was asleep, whereas the entire complaint alleges that the

attack occurred in the house of PW.4/CW.1- Kadlenni Basappa.

72. As per the evidence of PW.2/CW.3-Ambli Jayappa the house of the deceased is situate at a distance of 400-500 meters from the house of PW.4/CW.1- Kadlenni Basappa.

73. Despite the said wound certificate being available and having been issued on 26.07.2010 and MLC No.222/2010 having been registered, there is no investigation done at the house of the deceased Kamaraj, there is no examination made of the said house.

74. In fact, the entire investigation and the evidence of the investigating officer is completely silent about the contents of wound certificate which had been issued at an undisputed point of time. The said wound certificate at ExP.7 also indicates that there is a sutured wound present over the left parietal region measuring in 7x1 centimeters and there is subdural hematoma extending over left temporal occipital region with fracture of left parietal bone wound. The injury being 7 x 1 centimeters at the time of when the wound certificate was issued, it is not explained as to how a sutured wound of 15 inches in size was present at the time when the post-mortem was conducted. It is not that a sutured wound would grow and become 15 inches admittedly it is not an open wound.

75. Even as regard the sutured wound, there is no explanation as to how and who sutured the wound. Moreso when he has not received any particular treatment at the Holalu Hospital. The evidence on record as regards the place of assault, nature of assault, time of assault, injuries caused at that time, treatment given to the said injury at Holalu Hospital, arrival of the deceased at the City Central Hospital, the suturing of the wounds, the size of the sutured wound being 7x1 centimeters as on 26.07.2010 which became 15 inches as on 02.8.2010 when the post-mortem was conducted has not been explained nor is there any evidence recorded relating there to. This lacuna was absolutely required to be explained in the evidence of the prosecution.

76. As aforestated from 26.07.2010 to 2.8.2010 there are no records which have been produced as regards the treatment made available to the deceased at the City Central Hospital Private Limited. It is also stated that three burn holes in the corners of the left temporal parietal area were observed. None of the MO's if had been used namely the Stick, Axe or the Stone could cause burn holes in three corners of the left temporal parietal area. There is no allegation of any equipment or weapon being used which could cause such an injury to the deceased Kamaraj. These aspects have also not been explained in the evidence of the prosecution.

77. Coming to the defense of the accused at the time when cross-examination of the witnesses was conducted, the suggestions which have been put across and the nature of questioning indicates that when the accused were travelling towards their grain thrashing yard, the deceased, injured, along with other family members had assaulted the accused by waiting for them, in regard to which another complaint in Crime No.42/2010 had been filed by the accused against the Complainant and others herein. The said complaint and evidence on record in the said proceedings have been marked in the present proceedings as Ex.D1 to 17. Though the statements only are marked it is to be noted that the said marking was made subsequently, after it was remanded by this Court, before the trial Court for the purpose of recordal of such evidence.

78. The prosecution has categorically stated that they have no cross-examination on the said documents. By stating so, the prosecution has accepted the said documents, there being no challenge to the aforesaid Ex D.1 to 17. Such being the case, this Court would have to consider the said documents and evidence to be uncontroverted and would have to take the same into consideration. Having taken the same into consideration, it supports the earlier reasoning that the incident did not occur at 12.00 a.m, but had occurred at an earlier point of time.

79. The evidence as discussed above leaves much to be desired, so also the manner and extent of the investigation. There has also been no examination of independent witnesses by the Investigating officer or the prosecution, despite there being, as per the evidence, at least 10 persons who have witnessed the incident and its aftermath. All the witnesses examined are interested witnesses whose testimonies are replete with contradictions and/or their evidence is unbelievable as discussed above.

80. Applying the decision of the Hon'ble Apex Court in Hem Raj's case (supra), it is clear that in the present case, non-examination of independent witnesses would result in an adverse inference being drawn against the prosecution. Again, applying Hem Raj's case neither the house of PW.4/CW.1-Kadlenni Basappa has been examined for the purpose of blood stains, no forensic examination has been done at the said house, no photographs have been taken by the investigating officer of the said house nor has the house of the deceased Kamaraj been examined at all, despite the MLC in relation thereto stating that Kamaraj had been assaulted in his house at 11 p.m. There are serious lacunae in the investigation practices which has been followed by the Investigating officers in the present case.

81. Though all the witnesses claim to be eye witnesses, the evidence which has been given by the said witnesses during their examination-in- chief, as also the statements which have been recorded, though belatedly appear to be parroted, created for the purpose of prosecution. Therefore, in our considered opinion, the case of the prosecution does not inspire confidence. As held by the Hon'ble Apex Court in Eknath Ganapat Aher's case, the non-examination of independent witnesses at the spot would require adverse inference being drawn.

82. As held by the Hon'ble Apex Court in Krishnegowda's case, once there is a clear contradiction between the medical and the ocular evidence coupled with severe contradictions in the oral evidence, clear latches in investigation, then the benefit of doubt has to go to the accused.

83. Even otherwise, a wound at the time of examination of the deceased for the first time measured 7 cm x 1 cm which became 15 inches at the time of postmortem. The triangular shape bone was hanging with three holes with burn marks. The ocular evidence does not indicate as to how these injuries had been caused, more particularly as to the holes in the said bone which are burnt. There is nothing on record to indicate how the same could have occurred. Therefore, the ocular evidence provided no explanation to the injuries found on the deceased, thus, the said ocular evidence also cannot be believed. That apart, as observed hereinabove, the small intestine contained semi-digested food and the large intestine contained fecal matter even after a period of six days of the injuries having occurred during which time the deceased was in a coma and did not have any solid or semi solid food. This aspect has not been dealt with by the prosecution or the trial Court. All

these aspects are extremely damaging to the prosecution case as held by the Hon'ble Apex Court in Ram Narain's case (supra), these aspects would negate and deals a deathblow to the case of the prosecution resulting in the irresistible conclusion that no such offence as alleged had occurred.

84. All these evidences which we have dealt with have not been considered by the trial Court in a proper perspective, resulting in the conviction of the accused which ought not to have occurred.

85. Though we are conscious of the fact that there is a death which has occurred, the fact that death has occurred cannot result in a conviction of the accused, since the same would only amount to moral conviction and not a legal conviction on the basis of evidence on record which establishes that the offence infact had been committed by the accused.

86. As discussed and detailed hereinabove there is no evidence on record which would implicate the accused, except that of the interested witnesses which is not supported by any other independent material witness, though it is categorically stated that there were atleast 10-15 people present at the scene of occurrence of the crime.

87. In view of the above, we are of the considered opinion that the conviction of the accused by the trial Court is not sustainable. Hence, we pass the following:

ORDER i. The appeal is allowed. The accused are acquitted of the offences by giving them benefit of doubt. ii. Accused 1 to 6 being on bail, no order of release is required to be made. The bail bonds stand discharged.

iii. The Fine amount if any deposited by the accused is directed to be refunded to the respective accused.

iv. The Director General of Police is directed to initiate necessary proceedings against the Investigating Officers for having mishandled the entire investigation and not followed proper investigating techniques.

v. The Director General of Police is also directed to from time to time hold training sessions for the Investigating Officers as regards the manner in which an investigation has to be conducted, both prior to the inclusion of a serious offence and thereafter since there are two Investigating Officers who get involved in investigating of such an offence. In the present case, neither the earlier Investigating Officer nor the second Investigating Officer have discharged their duties in a proper and required manner.

vi. The Director General of Police is also directed to get prepared a proper standard operating procedure for investigation including forensic and scientific methodologies to be followed during investigation.

Sd/-

JUDGE Sd/-

JUDGE sh/svh