HON'BLE SRI JUSTICE K. LAKSHMAN

AND

HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

CRIMINAL APPEAL No.57 OF 2014

JUDGMENT: (Per Hon'ble Sri Justice K. Lakshman)

Heard Mrs. Shalini Saxena, learned Assistant Public Prosecutor appearing on behalf of the appellant - State and Mr. Mohammad Muzaffer Ullah Khan, learned counsel for the respondents - accused.

2. The State filed the present Criminal Appeal challenging the judgment dated 23.02.2012 passed by learned I-Additional Metropolitan Sessions Judge, Hyderabad in Sessions Case No.94 of 2011 acquitting accused Nos.1 to 9 for the offences under Sections - 148, 120B & 452 and 302 read with 149 of IPC.

3. The appellant herein is the State, while respondent Nos.1 to 9 herein are arraigned as accused Nos.1 to 9 in the aforesaid S.C. No.94 of 2011. For the sake of convenience, the parties are hereinafter referred to as per their ranks in S.C. No.94 of 2011.

4. Mohd. Qamaruddin (deceased No.1) is the husband of Smt. Sajida Begum (deceased No.2), while Mohd. Abdulla Biyabini (deceased No.3) and Mohd. Kirmani (deceased No.4) are their sons

and Smt. Neha Afrin (deceased No.5) is their daughter and the wife of accused No.1. Accused Nos.2 and 3 are the brothers of accused No.1, while accused No.4 is the brother-in-law of accused No.1. Accused No.5 is the wife of accused No.4, accused No.6 and 9 are the sisters of accused No.1, while accused No.7 is the second wife of accused No.1 and accused No.8 is the wife of accused No.2. The *de facto* complainant - Smt. Nishad Begum is the wife of deceased No.3 and daughter-in-law of deceased Nos.1 and 2.

5. The case of the prosecution is as under:

i) On 23.11.2008, the marriage of accused No.1 was performed with deceased No.5, the daughter of deceased Nos.1 and 2. After the marriage, she led marital life with accused No.1 for three (03) months happily and thereafter differences arose between them. Since then, deceased No.5 was staying with her parents. Even a case in Crime No.176 of 2009 was registered against accused No.1 and his parents for the offences under Sections - 498A, 420 and 323 of IPC and Sections - 4 and 6 of the Dowry Prohibition Act, 1961. She also filed a maintenance case vide M.C. No.200 of 2009, wherein an amount of Rs.4,000/- per month was awarded per month as maintenance with arrears for ten (10) months. She also got issued legal notice to accused

No.1 to pay the maintenance including arrears. Accused No.1 and his parents were attending the cases. On one such adjournment, when accused No.1 and his parents were returning home after attending the case, the mother of accused No.1 met with a road accident, sustained head injury, and died. Due to which, the father of accused No.1 went into depression. All these aggravated the grudge in the mind of accused No.1.

ii) Accused No.1 also suffered financially owning to the aforesaid cases, and thereby all the family members vexed with the series of events in the hands of deceased No.1 and his family members. Thus, accused No.1 and his family members bore grudge against deceased No.1 and his family members and decided to eliminate them. In pursuance of their plan, accused No.1 made recce at the house of deceased No.1 i.e., H.No.2-3-647/A/360, Premnagar, Amberpet, Hyderabad, and later hours observed the movements of the inmates. On 29.05.2010 at about 11.00 P.M., accused No.2 visited the house of deceased No.1 and noticed that all the vehicles are inside the house and confirmed availability of the family members of deceased No.1, he went and informed accused No.1 and other family members.

iii) On 30.05.2010 at about 5.00 A.M., accused Nos.1 to 9 were prepared by taking deadly weapons i.e., accused No.1 with an iron pipe, accused No.2 with an iron pipe, accused No.3 with screwed iron part, accused No.4 one stick, accused No.5 with one knife, accused Nos.6 and 7 with chilli powder packets and accused Nos.8 and 9 with knives. Accused No.1 and 2 came to the house of deceased No.1 on their motorcycle (Hero Honda) bearing registration No.AP 11 T/R 2766 and parked near CPL Church, while others came by foot. When all reached together near the house of deceased No.1 at about 6.15 A.M., at which time deceased No.1 just opened the gate of the house and accused Nos.1 to 4 pounced on the deceased No.1 and bolted the gate from inside. Accused No.1 attacked deceased No.1 with iron pipe on his head, due to which, he fell down. On hearing hue and cry of deceased No.1, deceased Nos.2 and 5 woke up and came out from their rooms into the Verandah. Accused No.1 attacked them with iron pipe on their heads causing severe injuries. Accused No.2 attacked deceased Nos.3 and 4 with iron pipe causing severe head injury. Accused No.3 attacked deceased No.3 with screw iron part on the head by causing severe injuries. Accused No.4 attacked deceased

No.4 with stick causing injuries, while accused Nos.5 to 9 guarding the scene outside the house.

iv) After commission of offences, all the accused fled the scene. Thereafter, all the injured were shifted to Osmania General Hospital, where deceased Nos.1 to 4 were declared dead, while deceased No.5 died while undergoing treatment on 02.06.2010.

6. On receipt of the report from PW.1 on 30.05.2010 at 10.00 A.M., the police registered a case in Crime No.207 of 2010 for the offences under Sections - 452, 302 and 307 read with 34 IPC and investigated into the matter.

7. On completion of investigation, the Investigating Officer laid charge sheet against the accused for the offences punishable under Sections - 120B, 147, 148, 452, 302 and 302 read with 149 of IPC, and the same was taken on file vide P.R.C. No.43 of 2010. Since some of the offences are triable by the Sessions Judge, IV Additional Chief Metropolitan Magistrate, Hyderabad, committed the said case to the Court of Sessions and the same was taken on file vide S.C. No.94 of 2011 and proceeded with trial.

8. The trial Court framed charges under Sections - 148, 120B and 452 of IPC against all the accused, and charges under Section -

302 of IPC was framed against accused No.1 under three counts and also Section - 302 read with 142 of IPC under two counts; charge under Section - 302 read with 149 of IPC was framed against accused Nos.2 to 9 under three counts; charge under Section - 302 of IPC was framed against accused Nos.2 and 3; charge under Section - 302 read with 149 of IPC was framed against accused Nos.1 and 4 to 9; charge under Section - 302 of IPC was framed against accused Nos.2 and 4; charge under Section - 302 read with 149 of IPC was framed against accused Nos.2, 3 and 5 to 9. All the accused denied the said charges and pleaded not guilty and prayed for trial.

9. During trial, the prosecution has examined as many as 22 witnesses *viz*., PWs.1 to 22, marked Exs.P1 to P64 documents and exhibited MOs.1 to 22. No oral evidence was let in on behalf of the accused, however, Ex.D1 - statement of PW.1 recorded under Section - 161 of Cr.P.C. was marked.

10. On completion of trial and on appreciation of evidence, both oral and documentary, learned trial Court found the accused not guilty of the respective charges framed against them and accordingly acquitted them.

11. Feeling aggrieved by the said judgment acquitting all the accused, the State preferred the present appeal.

12. During pendency of the present appeal, learned counsel for the respondents filed a memo vide USR No.14017 of 2023, dated 07.02.2023 along with death certificate stating that respondent No.2 - accused No.2 died. Pursuant to the same, this Court abated the proceedings against him vide orders dated 28.02.2024.

13. **CONTENTIONS OF THE APPELLANT - STATE**:

i. PW.1, an eye-witness to the incident, clearly stated that she saw accused Nos.1 to 4 when they came to their house for discussion between the deceased family and accused family of settlement of disputes and, therefore, she could identify them in the Court;

ii. Apart from the evidence of PW.1, there is also evidence of PW.2 with regard to grill gate. But, without considering the same, the trial Court gave a finding that there is no mention about the grill gate in rough sketch of scene of offence;

iii. PW.1 is not an interested witness;

iv. Though PWs.3 to 6, eye-witnesses to the incident, did not support the prosecution case, still there is evidence of PW.1, who is also an eye-witness to the incident.

v. The prosecution also proved the ingredients of the aforesaid charges;

vi. The offences committed by the accused are grave and serious in nature; and

vii. The trial Court without considering all the said aspects and based on surmises and assumptions, acquitted the accused.

With the aforesaid submissions, learned Assistant Public Prosecutor sought to allow the appeal.

14. **CONTENTIONS OF RESPONDENTS - ACCUSED**:

i. PWs.3 to 6 said to be eye-witnesses did not support the prosecution case as they turned hostile;

ii. There is no direct evidence to prove the guilt of the accused;

iii. Even, the circumstances on which the prosecution relied do not form a complete chain to connect the accused for the alleged offences;

iv. The prosecution failed to prove the essential ingredients of the aforesaid offences;

v. Test identification parade was not conducted by the Investigating Officer and, therefore, identification of culprits is very remote;

vi. Having considered all the said aspects, the trial Court acquitted the accused and there is no error in it; and

vii. Learned counsel for the respondents - accused also relied on the principle laid down by the Hon'ble Supreme Court in **Meharaj Singh (L/Nk.) v. State of U.P.**[1], **Narendrasinh Keshubhai Zala v. State of Gujarat**[2]; **B.N. Singh v. State of Gujarat**[3] and **Ravasaheb @ Ravasahebgouda etc. v. State of Karnataka**[4].

With the aforesaid submissions, learned counsel for the respondents – accused sought to dismiss the appeal.

15. In view of the aforesaid submissions, the point that arises for consideration is:

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1. (1994) 5 SCC 188
2. 2023 INSC 241
3. 1990 SCC (Cri) 283
4. (2023) 5 SCC 391

Whether the acquittal of the accused for the aforesaid offences is sustainable, both on facts and in law?

16. As already stated above, the prosecution examined PWs.1 to 22. PW.1, the complainant, is the wife of deceased No.3 and daughter-in-law of deceased Nos.1 and 2; PW.2, the daughter of deceased Nos.1 and 2 is the circumstantial witness; PWs.3 to 6 are eye-witnesses to the incident; PWs.7 and 8 are the *panch* witnesses for scene of offence observation-cum-seizure *panchanama*; PW.9 is the *panch* witness for inquest of deceased No.1; PW.10 is *panch* witness for inquest of deceased Nos.2 and 5; PW.11 is *panch* witness for inquest of deceased No.3; PW.12 is *panch* witness for inquest of deceased No.4; PWs.13 and 14 are *panch* witnesses for confession-cum-seizure *panchanama* of accused Nos.1 to 8; PW.15 is the doctor, who treated accused No.1 for the injuries he sustained in the incident and issued Ex.P41 - wound certificate; PW.16 is the doctor, who conducted autopsy over the dead bodies of deceased Nos.1 to 5; PW.17 is the Clues Team Officer, CCS, Hyderabad, who visited the scene of offence and collected material objects; PW.18 is the Sub-Inspector of Police, Amberpet Police Station, who conducted inquest over the body of the deceased No.2; PW.19 is the Inspector of Police,

Saidabad Police Station, who conducted inquest over the bodies of deceased Nos.4 and 5; PW.20 is the Sub-Inspector of Police, Amberpet Police Station, who conducted inquest over the body of the deceased No.3; PW.21, the Inspector of Police, Amberpet Police Station, is the first Investigating Officer, who issued FIR and conducted inquest over the body of deceased No.1; and PW.22 is the Investigating Officer, who recorded the statements of witnesses and laid charge sheet.

17. The aforesaid facts would reveal that in the present case, there are five (05) murders. All the five deceased belongs to one family. Thus, it is a '**family murder case'**.

18. **MOTIVE**:

i) According to the prosecution, it is not in dispute that the marriage of accused No.1 with deceased No.5 was performed in the month of November, 2008. Accused No.1 is nephew of deceased No.2. After their marriage, they lived together for two (02) months and, thereafter, disputes arose between them. According to PWs.1 and 2, accused No.1 and his family members demanded additional dowry and parents and brothers of deceased No.5 refused for the same.

Therefore, disputes arose between them, and deceased No.5 came back and started residing with her parents.

ii) Deceased No.5 has also filed a complaint against accused No.1 and his parents and the same was registered as a case in Crime No.176 of 2009 for the offences under Sections - 498, 420 and 323 of IPC and Sections - 4 and 6 of the Dowry Prohibition Act, 1961. Deceased No.5 also filed a petition under Section - 125 of Cr.P.C. against accused No.1 and his parents vide M.C. No.200 of 2009 seeking maintenance. The mother of accused No.1 used to attend the said maintenance case. Learned Magistrate also allowed the said M.C. and granted an amount of Rs.4,000/- per month to deceased No.5 towards maintenance along with arrears for ten (10) months. Accused No.1 did not pay the said amount. Therefore, deceased No.5 has issued legal notice to accused No.1 demanding to pay the said monthly maintenance amount including arrears. Even, accused No.1 was arrested and was released on bail in the said maintenance case.

iii) During pendency of the aforesaid M.C., in one of the hearings, after attending the Court, the mother of accused No.1 met with an accident, sustained head injury, and died. Despite knowing the said incident, the parents and other family members of deceased

No.5 did not attend her funeral. Accused No.1 is nephew of deceased No.2. Due to the said incident, the father of accused No.1 went into depression. Accused No.1 also suffered financially due to the aforesaid cases. Therefore, accused No.1 and his family members bore grudge against deceased No.5, her parents and brothers thereby decided to eliminate them. Accused No.1 conducted a recce and accused No.2 observed and ascertained the presence of the deceased in the house on the date of incident and, thereafter, they have committed murder of the deceased.

iv) To prove the said aspects, the prosecution examined PW.1, the wife of deceased No.3, PW.2, daughter of deceased Nos.1 and 2 and sister of deceased Nos.3 to 5.

v) PW.2, sister of deceased No.5 in her cross-examination categorically admitted that deceased No.5 was suffering from hearing problem. Both PWs.1 and 2 specifically deposed about the said aspects. Even then, nothing contra was elicited from them during cross-examination. Thus, there is no dispute about the marriage of deceased No.5 with accused No.1 and that accused No.1 is the nephew of deceased No.2. There were disputes between the family of deceased No.5 and the family of accused No.1. Deceased No.5 started

living with her parents. She has lodged a complaint against accused No.1 and his parents and a case in Crime No.176 of 2009 was registered against them for the offences mentioned above. She has also filed a petition seeking maintenance. When accused No.1 and his parents were returning home, mother of accused No.1 met with an accident, sustained head injury, and died, due to which, the father of accused No.1 went into depression. Therefore, all the said aspects would prove the motive on the part of accused Nos.1 to 4 in commission of the aforesaid offences. Thus, the prosecution proved the motive beyond reasonable doubt.

19. **EVIDENTIARY VALUE**:

i) PW.1, wife of deceased No.3, deposed that the marriage of deceased No.5 with accused No.1 was held during November, 2008. Her marriage with deceased No.3 was performed on 19.02.2010. She further deposed that there were matrimonial disputes between accused No.1 and deceased No.5 and that deceased No.5 started living with her parents. The reason for arising disputes between them was that accused No.1 demanded for additional dowry, for which the parents of deceased No.5 did not accept. She further deposed about lodging of complaint against accused No.1 and his parents for the aforesaid

offences and filing of petition under Section - 125 of Cr.P.C. seeking maintenance against accused No.1 and his parents and that learned Magistrate awarded monthly maintenance of Rs.4,000/- to deceased No.5 and ~~also~~ arrears and that accused No.1 failed to pay the same.

a) She further deposed that on 30.05.2010 at about 6.15 A.M., herself, her parents-in-law, her husband, her sister-in-law and brother-in-law, (deceased Nos.1 to 5) were present in their house. At that time, her father-in-law opened the main gate of their house and kept the vehicles outside the house. While he was entering the house. Accused Nos.1 to 4 forcibly trespassed their house. Accused No.1 entered their house first. They have bolted the gate of the house. Then, accused No.1 first hit her father-in-law (deceased No.1) with an iron rod on his head. Her father-in-law started shouting and then her mother-in-law (deceased No.2) came into the *Verandah*. Accused No.1 hit her also with the same iron rod on her head. Her parents-in-law fell down and sustained serious bleeding injuries on their head. Then, deceased Nos.3 to 5 came to the *verandah* from inside the house, then all accused Nos.1 to 4 began to beat deceased Nos.3 to 5 with iron rods and sticks. Deceased Nos.3 to 5 all fell collapsed on the floor. She was also present there by the time her husband entered

into the *verandah*. He had pushed her into the Hall adjacent to it and bolted the grilled gate and then, accused Nos.1 to 4 left the house. Then, she informed about the incident to the husband of her sister-in-law, namely Mr. Md. Athar, who was residing near to their house, over cell phone of her father-in-law. Then, she informed about the incident to her father over cell phone. Mr. Md. Athar came there within 5 to 10 minutes. Later, her father came within 5 or 10 minutes of Md. Athar reaching. Mr. Athar called for the 108 Ambulance. Thereafter, the police also came there. After the police coming there, she preferred report to the police by sitting in the house opposite their house. One police constable drafted the report and she signed on it. Ex.P1 is the said report dated 30.05.2010 and it contains her signature. The police also examined her. Deceased Nos.1 to 4 died on the spot, whereas deceased No.5 succumbed to death after three (03) days during the treatment in Osmania General Hospital.

b) During cross-examination, she admitted that since January, 2010, during her marriage engagement, she learnt about the affairs of the family of her husband. Prior to that, she was oblivious to any of those affairs. For the first time she spoke about the said fact in the Court. In Muslim custom, Muslim bride shall not participate in the

marriage talks, proposals etc. Prior to her marriage, she did not meet any of the male members in the family of her husband. It is a customary practice in Muslims that after the marriage, the husband and wife shall visit the house of in-laws of the husband on every Friday and staying there till Monday for a period of five (05) weeks. Prior to her marriage, she was not acquainted with accused Nos.1 to 4 as they were not related to her or known to her. Accused Nos.1 to 4 did not attend or participate in her marriage. Accused Nos.1 to 3 visited the house of her in-laws for 2 or 3 times after her marriage, but the same was not stated by her in any of her statements before the police or before the Magistrate.

c) She further admitted that when she being *Pardanashin* lady, never came out before strangers including the accused, who are also strangers to her. She did not meet accused Nos.1 to 3 when they came to her in-laws' house for 2 or 3 times, but she saw them. Since there were disputes between accused No.1 and deceased No.5, accused Nos.1 to 3 and their family members were not invited to the house of her husband for any purpose. In her report to the police and in her statements to the police and the Magistrate, she did not state how she learnt about the said disputes and that how she learnt about the names

of accused Nos.1 to 4. After her marriage, she never visited the house of accused Nos.1 to 3 along with her husband. She is not having any acquaintance with lady members of the house of accused Nos.1 to 3. The width of the gate way of her in-laws' house is about 5 feet. The distance between the gate and the *verandah* of her in-laws' house is about 10 to 12 feet. There was Chetak Scooter between the *verandah* and the said gate. There was another two-wheeler also before kitchen room of the said house. Kitchen room is situated at the left side of the *verandah*. After satisfying herself with regard to the contents of Ex.P1, she signed on it. Her third language is Telugu and, therefore, she knows Telugu a little.

d) She further admitted that after narrating the entire incident, Ex.P1 was prepared and she signed on it. At the time of preparing report to the police in Ex.P1, her father, LW.2 - Md. Athar and her sister-in-law (PW.2) were present beside her. She preferred Ex.P1 at about 10.00A.M., on the date of offence. Before her preferring report to the police, her father, LW.2 - Md. Athar and PW.2 came and talked with her and there was discussion among them. In Ex.P1, it is not specifically stated that she witnessed the incident and that she did not give the names of accused Nos.3 and 4. She did not go to Osmania

General Hospital on that day. In Ex.P1 and in her statements before the police and the Magistrate, she did not state that she contacted Mr. Md. Athar with the cell phone of her father-in-law.

e) She further admitted that she remarried again after the incident. Her second husband is related to her prior to her marriage with him. Her second marriage was performed on 02.03.2011. However, she denied the suggestion that she was having affair with her second husband prior to marrying him and that she was not interested in marrying her first husband. She was not called by the police for identifying any of the accused. She did not see accused Nos.1 to 4 subsequent to the date of incident i.e., 30.05.2010 till the date of her deposition. In her report to the police or in her statement to the police or to the Magistrate, she did not give the details of cell phone of her father-in-law through which she called Mr. Md. Athar and her father. In her statement to the police and in her report to the police, she did not state that at what times after the incident, LW.2 - Md. Athar and her father reached the scene of offence. In her report to the police and in her statements to the police, she has not stated about Mr. Md. Athar calling for 108 Ambulance and later police coming to the scene of offence etc., and that after a constable drafting a report

she signed on it. She was examined by the police in front of the house of her in-laws and that her statement was recorded in Telugu language on the same day.

ii) PW.2 is the daughter of deceased Nos.1 and 2 and sister of deceased Nos.3 to 5. She deposed that during the month of November, 2008, the marriage of accused No.1 with deceased No.5 was performed. Accused No.1 treated her sister properly for three months and later he demanded additional dowry and sent her to their parents' house for bringing additional dowry. She has also deposed about lodging of complaint by deceased No.5 and even filing of maintenance case and awarding of Rs.4,000/- towards monthly maintenance and that not paying the same by accused No.1 and sending legal notice to him for payment of the same etc.

a) She further deposed that on 30.05.2010 morning at about 7.30 A.M., when she was at her house, PW.1 informed her by telephone that accused No.1 and his family members attacked her parents, her brothers and sister. She and her husband rushed to her parents' house wherein they found her parents, brothers and sister were lying on the floor at *verandah* of her parents house with bleeding injuries. Within five minutes of them reaching her parents' house, the

police came there and took all the injured persons to the Osmania General Hospital. She also went to the said hospital, where the doctors declared deceased Nos.1 to 4 died. The doctors administered treatment to her sister and she succumbed to injuries two days after the incident while undergoing treatment. Nobody was there in the house of her parents.

b) During cross-examination, she admitted that she pursued studies till her Intermediate. From the date of her marriage with Md. Athar, she is staying in his house. Her marriage was performed on 16.07.2006. She knows the business transactions of her father and brothers. Her father and brothers are having properties at Ismail Nagar, Yerrakunta, Barkas. In the cases filed against accused No.1 by her sister, she was not cited as witness. She is living separately away from her parents and she never attended the Court with respect to the said case between her sister and accused No.1. She has no personal knowledge with regard to the facts of the said case filed by deceased No.5. Her sister, deceased No.5, was suffering from hearing problem. There was no good relationship between the family of accused and family of her parents on account of the accused family not taking deceased No.5 to their family. The mother of accused No.1 died in

the month of April, 2010. Despite knowledge of the said death, her parents and her brothers did not attend the funeral. She did not state in her statement to the police that on 30.05.2010 at 7.30 A.M., she received information from PW.1 to her phone about the incident. Since the police did not ask her, she had not stated the same to them. She conveyed to the police that she learnt about the incident on 30.05.2010 at 7.30 A.M. However, she denied the suggestion that the accused have nothing to do with the murders of deceased and that since the accused are having disputes with her father and brothers regarding the property at Ismail Nagar, they murdered the deceased Nos.1 to 5 and that they foisted the present case against accused Nos.1 to 5 by taking advantage of the said disputes between accused No.1 and her sister. Her statement was recorded at Osmania General Hospital by the police. She was examined by the police only one time. Her husband is the only earning member of her family and he used to get Rs.6,000/- per month as salary. Betrothal ceremony of her sister-in-law was performed in a grand manner on 05.06.2011. She was at the scene of offence for ten minutes after reaching there.

iii) PW.3 is the neighbor of the deceased. He deposed that his house is opposite to the house of deceased and he knows deceased

No.2, wife of deceased No.1. He also knows the family members of deceased No.1 i.e., Md. Abdullah Biya Bini, Md. Kirmani and Neha Afrin, deceased Nos.1 to 3. Deceased No.1, his wife, sons and daughter are no more. He does not know the son-in-law of deceased No.1, by namely Syed Jahangir. He never saw them. His daughter-in-law informed him that there was a quarrel in the house of deceased No.1, he opened the door of the window of his house and noticed two women in *Burkha* dress in front of the house of deceased No.1. Then, he tried to go to the house of deceased No.1, but his grandson, Md. Kaleem, stopped him. Then, he did not go. In the meanwhile, two males came out from the house of deceased No.1 and left the place and those two women also followed them. He did not witness the incident. Thus, the prosecution declared him hostile.

iv) PW.4 is another neighbor of the deceased. His house is adjacent to the house of deceased No.1 on its right side while facing towards the house of deceased No.1. He knows deceased No.1, his wife, sons and daughter. He does not know the son-in-law of deceased No.1. He never saw him. He did not attend the marriage of deceased No.5. He does not know accused Nos.1 to 9 who are present in the Court hall. Deceased No.1, his wife, his two sons and his

daughter are no more alive. About one year ago at about 7.45 or 8.00 A.M., there was a pool of crowd and police personnel in the front of deceased No.1's house he also found an Ambulance approaching the house, he learnt that deceased Nos.1 to 5 were murdered. The public were talking that the son-in-law of deceased No.1 committed those murders. He did not witness the occurrence in this case. The police did not examine him, but somebody has taken his name and other particulars. Thus, he did not support the prosecution case and, therefore, prosecution declared him hostile.

v) PW.5 and PW.6, who are house-wife and tailor by profession, respectively, did not support the prosecution case and, therefore, they were declared hostile by the prosecution.

vi) PW.7 is the *panch* witness for scene of offence-cum-seizure *panchanama*. He deposed that on 30.05.2010, he went to the house of deceased No.1 on hearing that there were some offences taken place there. He went there at about 9.00 or 10.00 A.M. and by that time, the police were there at that house. The police requested him to act as *panchayatdar* for the scene of offence. PW.8 was also there as *panchayatdar*. By the time they reached, the police have already

commenced observation of scene of offence. In their presence, the police also observed the scene of offence. The police prepared the scene of offence observation *panchanama*, he and PW.8 signed on it. Ex.P6 is the scene of offence *panchanama* dated 30.05.2010 and Ex.P7 is the rough sketch of the scene of offence prepared in their presence. He found the blood stains on the walls of the said house. He cannot say what the articles that were seized by the police at the scene of offence since he left the place after signing on Exs.P6 and 7. At this stage, the prosecution declared him as hostile and cross-examined him.

a) During the cross-examination by learned Additional Public Prosecutor, PW.7 admitted that the police seized the pieces of broken bangles (MO.2) at the scene of offence.

b) During the cross-examination by the accused, this witness admitted that the house of deceased No.1 is surrounded by residential houses. There are about 25 houses between his house and the house of deceased No.1. The Amberpet police used to call him as *panchayatdar* whenever any incident takes place in that locality. About 10 to 25 people were inside the house of deceased No.1. Later on, about 500 to 600 people gathered there. There was lot of

commotion at that house. Ex.P6 was not drafted on his dictation or on the dictation of his friend (PW.8). He was there for about 10 to 15 minutes. Since the police asked him to sign on Exs.P6 and P7, he signed on them. He does not know Telugu contents in Ex.P6. He is in the habit of putting the date under his signature. In Ex.P7, he did not put the date under his signature. His particulars are not mentioned in Ex.P7.

vii) PW.8 is another *panch* witness for recovery of MOs.1 to 3. He deposed that the house of deceased No.1 is situated 3 or 4 houses after the Hotel in which he was working. The deceased is no more. On 30.05.2010, the police called him to the house of deceased No.1 for the purpose of conducting scene of offence observation *panchanama*. Therefore, he went there. PW.7 was also present. In their presence, the police conducted scene of offence *panchanama* and the same was prepared in Telugu. He signed on it. Ex.P6 is the scene of offence *panchanama* and it contains his signature. He does not know whether any rough sketch of scene of offence was prepared or not. There were two vehicles at the scene of offence. There were blood stains at the scene of offence. The police have seized blood stains by collecting it with white cloth. The police also seized blood-

stained human hair, one packet of chilli powder, broken bangle pieces and a ladies chain. MO.1 is some hair, MO.2 is some broken bangle pieces, MO.3 is one packet of chilli powder.

a) During cross-examination, he has admitted that he cannot read and write Telugu Language. He does not know the contents of Ex.P6 since it is written in Telugu language. PW.7, elderly person in their Amberpet locality did not come to the scene of offence along with him. MOs.1 to 3 were not sealed at the time of seizure. The said Chilli powder and bangles are available in the local market.

b) During cross-examination, two Specific questions were put to PW.8 for which gave answers. The said questions and answers are as follows:

> "Q. You are speaking before the Court as tutored by the police. What do you say?
> Ans: Yes.
> Court Question: What is meant by "Yes"?
> Ans: Witness did not give any answer for this question of the court.
> Court Question: The counsel for the accused suggested to you that you are speaking before the court as tutored by the police. What do you say?
> Ans: No. "

viii) PW.9 is the *panch* witness for inquest of deceased No.1. He deposed that he knows deceased No.1 and he was present at Osmania General Hospital at the time of inquest over the dead body of deceased No.1. LW.14 was also present at that time. The police prepared inquest report. At the time of inquest, they have opined that deceased No.1 died due to the injuries sustained by him when he was battered with iron rods. He and LW.14 attested inquest report (Ex.P8). The police seized the wearing clothes of deceased No.1. He cannot identify the said clothes seized by the police due to lapse of time.

a) During cross-examination, he has admitted that he did not read the contents of ex.P8 and, therefore, he cannot give the details of each column of Ex.P8.

ix) PW.10 is the *panch* witness for inquest of deceased Nos.2 and 5. He deposed that he knows deceased No.2 and he was present at Osmania General Hospital at the time of inquest over the dead body of deceased No.2. LW.16 - Mr. Mirza Akhil Baig was also present along with her at the time of inquest. They opined that deceased No.2 succumbed to her injuries. She cannot say how deceased No.2 received those injuries. She signed in the inquest report (Ex.P9). The

police seized the wearing clothes of deceased No.2. MO.4 is the green colour polyester *pyjama* of deceased No.2, while MO.5 is her green colour polyester *kurtha,* which was seized by the police.

a) She further deposed that she also knows deceased No.5. Two days after the inquest of deceased No.2, the inquest over the dead body of deceased No.5 was also conducted at Osmania General Hospital and at that time also she was present. They opined that deceased No.5 also died due to the injuries sustained by her. They do not know how deceased No.5 sustained injuries. She signed on Ex.P10 - inquest report, dated 02.06.2010.

b) However, during cross-examination, she has admitted that she does not know the contents of Exs.P9 and P10.

x) PW.11 is the *panch* witness for inquest of deceased No.3. He deposed that he is the resident of Premnagar, Amberpet, Hyderabad and he knows deceased No.3. About one year ago, it may be on 30.05.2010, he went to Osmania General Hospital to see the dead body of deceased No.3 and the police have conducted inquest over the dead body of deceased No.3 in his presence and in the presence of LW.19. They have signed on Ex.P11 - inquest report

dated 30.05.2010. They have opined that the deceased died due to injuries sustained by him when he was beaten by somebody. At the time of inquest, the police seized a pant and MO.6 - cut drawer of deceased No.3. But, he cannot identify the said pant.

a) During cross-examination, he has admitted that since there is his signature on the slip attached to MO.6, he identified it. MO.6 is not sealed.

xi) PW.12 is *panch* witness for inquest of deceased No.4. He deposed that he is the resident of Patelnagar, Amberpet, Hyderabad. He knows deceased No.4. He was present at the time of inquest of dead body of deceased No.4 at Osmania General Hospital. LW.21 was also present. They have opined that deceased No.4 died of injuries sustained by him and beaten by rods. Ex.P12 is the inquest report of deceased No.4 and it contains his signature and the signature of LW.21. The police seized one cut baniyan and track pant on the dead body of deceased No.4. MO.7 is the track pant, while MO.8 is the cut baniyan.

a) During cross-examination, he has admitted that he cannot give the contents of Ex.P12 column wise. In Ex.P12, injuries of the

deceased were noted. Clothes, like MOs.7 and 8 can be available in the local market. MOs.7 and 8 were not sealed.

xii) PWs.13 and 14, *panch* witnesses for confession-cum-seizure *panchanama* of accused Nos.1 to 8. Since they did not support the prosecution case, they were declared hostile and were cross-examined by learned Additional Public Prosecutor.

a) However, PW.14 deposed in his chief examination that Exs.P13 toP20 are his signatures on eight confessional *panchanamas* dated 02.06.2010, while Exs.P21 to P26 are his signatures on six seizure *panchanamas*, dated 02.06.2010.

b) PW.15 admitted during cross-examination by learned Additional Public Prosecutor that Exs.P27 to P34 are his signatures on eight confessional *panchanamas*, dated 02.06.2010, while Exs.P35 to P40 are his signatures on six seizure *panchanamas*, dated 02.06.2010.

xiii) PW.15 is the doctor, who treated accused No.1 for the injuries he sustained in the incident. He deposed that on the requisition of Amberpet Police Station and brought by police constable (7781), he examined accused No.1 and found the following injury:

One laceration of 1x½ x½ cm. on the left side of the head.

The said wound was sutured outside. According to him, the said injury is simple in nature. He referred the patient to Neurosurgeon. He issued Ex.P41 - wound certificate.

a) During cross-examination, he has admitted that in Ex.P41 he has not noted whether the wound found by him was fresh or not, and learnt the said wound was fresh. If the wound is up to 10 hours, they would describe it as fresh wound. He has not mentioned the identification marks of the patient in Ex.P41. The police constable who accompanied the patient under Ex.P41 informed him that the said patient was an accused person.

xiv) PW.16 is the doctor, who conducted autopsy over the dead bodies of deceased Nos.1 to 5. She deposed that on 30.05.2010 at 2.00 P.M., she received requisitions from the Inspector of Police, Amberpet Police Station, to conduct post-mortem examination over four dead-bodies of deceased Nos.1 to 4 and accordingly she conducted post-mortem examinations on them.

a) During post-mortem examination, she found the following ante-mortem injuries on the dead body of deceased No.1-

1. An obliquely placed laceration of 5x3cm cavity deep with seeping out of brain matter on the right parietal region and with fracture of that part of skull;
2. A horizontally placed laceration of 4x2 cm bone deep on the right occipital region 5 cm below the right ear;
3. A horizontal placed laceration of 1x5x0.5cm bone deep on right occipital region 3 cm below the above injury;
4. An L-shaped laceration of 2x1.5cm cavity deep i.e., fracture of the skull on the left parietal frontal region 8 cm above the ear;
5. A vertical shaped laceration of 6x0.5cm bone deep 3 cm inner to the above injuries on the left parietal region;
6. A contusion of 4x3 cm on the left cheek bone;
7. A contusion of 2x0.5 cm above the lateral end of right clavicle;
8. A contused abrasion of 8x2 cm on the back of the right fore-arm a defence injury;
9. An abrasion of Ix1 cm on the right flank;
10. A contusion of 4x0.5 cm on the middle of the front of the right thigh;
11. Multiple abrasions each of 0.25 cm x 0.25 cm on the metacarpophalangeal joints on the dorsum of right hand;

12. A contused abrasion of 15x1 cm on the back left fore-arm;
13. Diffuse scalp contusion present all over the skull with an under lying fissured fracture presently extending from left temporal to right temporal area where it is intersecting the sutural fracture of temporal bone on the right side of skull which are extending into the base of skull in the middle and posterior cranial fossa;
14. Diffuse subdural and subarachnoid hemorrhage present all over the brain with laceration of right parietal region of the brain;

According to her, the cause of death is due to multiple blunt injuries to head and accordingly she issued Ex.P42 - post-mortem examination certificate.

b) On the same day, she conducted post-mortem examination over dead body of deceased No.2, and found the following ante-mortem injuries:-

1. A vertical placed split laceration of 5x1 cm bone deep on the right parietal area right to the mid line;
2. A laceration of 1x0.5 cm scalp deep on left side of the fore-head;
3. An obliquely placed lacerated wound of 4x0.5 cm scalp deep on the right parietal region 2cm behind the first injury;

4. An avulsion laceration of 12x6 cm bone deep with a flap of 5 cm with an underlying scalp contusion and depressed fracture of 3x1.5 cm x 0.5 cm on right parietal temporal region present 1.5 cm lateral to injury No.1;
5. A horizontally placed laceration of right ear of 5x2 cm x cavity deep with surrounding contusion;
6. A vertically placed laceration of 5x0.5 cm x scalp deep on the right occipital region 4 cm behind right ear;
7. A split laceration of 1x1 cm on right parietal prominence;
8. A vertical placed laceration of 7x1 cm x scalp deep on right occipital region;
9. A horizontally placed laceration of 2x1 cm x bone deep on the right parental occipital region 5 cm above the injury No.5;
10. An obliquely placed laceration of 5x1 cm x bone deep on the vertex;
11. A vertical plated laceration of 6x0.5 cm x bone deep on the left occipital region behind the ear;
12. A contusion of 5x2cus on the right shoulder;
13. Diffuse scalp contusion present all over the brain with an underlying depressed fracture of 7x5 cm on the right temporal

area with fissured fracture of temporal area on the left side of shall whose fracture lines extend into the base of the skull from the left to right in the middle cranial fossa with closed comminuted fracture of right middle and posterior cranial fossa; and

14. Diffuse subdural and subarachnoid hemorrhage present all over the brain.

According to her, the cause of death was due to multiple blunt injuries to the head and accordingly she issued Ex.P43 – post-mortem examination report.

c) On the same day, she also conducted post-mortem examination over dead body of deceased No.3, and found the following ante-mortem injuries:-

1. An obliquely placed laceration of 5x1cm skin deep on the right fore head at hair line;
2. A contusion of 2xt cm on the right temple;
3. 3 parallelly placed laceration of each of 3x0.5x skin deep, 1x1 cm skin deep and 1x1 cm skin deep on the right eye brow with a gap of 0.5 cm in between;

4. A contusion of 0.5x0.25 cm on the left forehead and 1x1 cm on the tip of the nose;
5. A laceration on 1x1 cm muscle deep on the chin with a surrounding contusion of 3x3 cm;
6. A split laceration of 6x4 cm x bone deep on the left parietal prominence;
7. A vertically placed laceration of 5x0.5 cm x bone deep on the left side of the vertex;
8. A vertically placed laceration of 1x1 cm x scalp deep on the vertex;
9. An obliquely placed laceration of 4xl cm x scalp deep and another of 4x2 cm x scalp deep on the right side of vertex;
10. Diffuse scalp contusion present all over the skull with comminuted fracture of all the skull bones including the calvaria and the base of the skull with subdural and subarachnoid hemorrhage present all over the brain;
11. An abrasion of 2x1 cm on the left shoulder and 1x1 cm on the top of the left shoulder;
12. A contusion of 3x3 cm on the left upper arm;

13. An obliquely placed contusion of 18x2 cm on the right back of chest and another of 10x2 cm x 4 cm above it which is present parallelly;
14. A semi-circular contusion of 5x4 cm of right mid arm;
15. A contusion of 2x1 cm on the middle of right forearm; and
16. A contusion of 1.5 cm x 1 cm on the right index finger on the palmer aspect;

According to her, the cause of death was due to multiple blunt injuries to the head and she issued Ex.P44 -post-mortem examination report.

d) On the same day, she also conducted post-mortem examination over dead body of deceased No.4, and found the following ante-mortem injuries:-

1. A laceration of 1x0.5 cm x scalp deep on the left area near hair line;
2. A vertical placed laceration of 2x0.5 cm x scalp deep on the left parietal area and of 3x0.5 cm x scalp deep on the left parietal occipital area;
3. A horizontal placed laceration of 4x1.5cm x bone deep on the left parietal and of 3x0.5cm x scalp deep on the left parietal occipital area;

4. A stellate shaped laceration of 6x5 cm on left occipital area and another placed vertically of 3x0.5 cm on the left occipital area;
5. A horizontally placed laceration of 2.5x0.5 cm on the vertex and another placed vertically of 3x0.5 cm x scalp deep on the right vertex and another placed vertically of 4x2 cm x scalp deep on the right parietal occipital area;
6. A horizontally placed laceration of 7x4 cm x bone deep on the right parietal occipital area;
7. A horizontal placed laceration 5x0.5cm x scalp deep on the right mastoid 2 cm behind the right ear;
8. A horizontal placed laceration of 3x05cm x scalp deep present 1 cm below the above injury;
9. 2 parallelly placed contusion each of 5x1 cm each with a gap of 1 cm on the back of neck;
10. Another parallelly placed contusion of 4x1 and 6x0.5 cm on the left side of the back of neck;
11. A contusion of 0.5x0.5 cm on the left mid clavicle;
12. A contused abrasion of 2x0.5 cm on the right first inter digital left;

13. An abrasion of 1x1 cm on the right knee, 2x1 cm below the right knee4 and another vertical placed contusion of 3x1 cm on the front of right leg and 0.5x0.5cm on the left knee;
14. Diffuse scalp contusion present all over the skull with comminuted fracture of the skull bones on either side including both calvaria and base of the skull which is obliquely fractured from left frontal to right occipital region across the 3 cranial dossae. Diffuse subdural and sub arachnoid having present all over the brain.

According to her, the cause of death was due to multiple blunt injuries to the head and issued Ex.P43 - post-mortem examination report.

e) PW.16 further deposed that on 02.06.2010 she received requisitions from the Inspector of Police, Amberpet Police Station, to conduct post-mortem examination over the dead-body of deceased No.5 and accordingly she conducted post-mortem examinations on her and found the following ante-mortem injuries:-

1) An obliquely placed sutured wound of 9x7 cm with sutures on right occipital area;
2) A sutural wound of 4cm with 3 sutures on right parietal prominence;

3) A “L” shaped sutured wound of 7cm and with 5 sutures of each limb of L shape on the vertex;
4) A sutured wound of 4 cm with 2 sutures on the left parietal prominence;
5) An abrasion of 1x0.5 cm on the left side of fore-head;
6) Diffused scalp contusion present all over the brain;
7) Extradural Hemorrhage present on right occipital region and diffuse subdural and subarachnoid hemorrhage present all over the brain; and
8) An obliquely placed fissured fracture of the base of the skull in the posterior cranial fossa on the right side;

According to her, the cause of death was due to multiple blunt injuries to the head. Deceased No.5 expired at Osmania General Hospital on 02.06.2010 at 4.30 A.M. She issued Ex.P46 - post-mortem examination.

f) She further deposed that according to her, out of six (06) weapons shown to her, two iron rods, one stick and blunt portion of the hunting sickle and GI pipes can cause the ante-mortem injuries noted in Exs.P42 to P46.

g) During cross-examination, she admitted that the lacerated injury can be possible by both short weapons and blunt objects, but usually those injuries can be possible by blunt objects. By seeing the lacerated injury, one cannot say that the said injury was caused by particular type of weapon, but it can be said that the said injury was caused by a blunt object or blunt weapon only. She has shown only the blunt objects among the weapons shown to her as the weapons that can cause the injuries as noted inExs.P42 to P46.

xv) PW.17 is the Clues Team Officer, CCS, Hyderabad. He deposed that he visited the scene of offence along with his photographer, finger print expert and assisted the Investigating Officer in collecting the physical evidence from the scene of offence by using scientific gadgets, such as blood evidence collection kit, advance physical evidence collection kit, poly ray (Multi-wave length light source), Euro light etc., They found blood stains in the scene of offence inside the compound wall at various places and blood samples were collected with swabs, control swabs were also collected, blood strained hair found at the scene of offence, blood stain cut hairs etc., were collected.

a) During cross-examination he admitted that he was not examined by the Investigating Officer in this case and that there is no documentary evidence to show that he assisted Investigating Officer in collecting physical evidence.

xvi) PW.18, Sub-Inspector of Police, Amberpet Police Station, deposed that on 30.05.2010 he conducted inquest over dead body of deceased No.2 at Osmania General Hospital in the presence of *panchayatdars i.e.,* PW.10 and LW.16 and prepared inquest report as in Ex.P9. He also seized clothes of deceased No.2, which are marked as MOs.4 and 5. At the time of inquest *panchayatdars* opined that she succumbed to her injuries upon being battered by somebody.

a) During cross-examination nothing contra was elicited from him.

xvii) PW.19, Inspector of Police, deposed that he conducted inquest over the dead body of deceased No.4 on 30.05.2010 in the presence of PW.12 and LW.21 under Ex.P12 and seized his clothes which are MOs.7 to 9. The *panchayatdars* opined that the deceased succumbed to the injuries sustained by him on his head when battered by somebody.

a) He also conducted inquest over the dead body of deceased No.5 on 02.06.2010 in the presence of PW.10 and LW.22, who opined that the deceased succumbed to injuries on the head when she was battered by somebody. He prepared inquest report vide Ex.P10.

b) During cross-examination, he admitted that Ex.P12 was drafted by his Sub-Inspector of Police, Mr. Naveen Kumar and signed by him. He did not issue any written summons to mediators of both Exs.P10 and P12.

xviii) PW.20, Sub-Inspector of Police, deposed that he conducted inquest over the dead body of deceased No.3 on 30.05.2010 in the presence of PW.11 and LW.19 under Ex.P11 and seized his clothes which are MOs.6 and 10. The *panchayatdars* opined that the deceased died due to injuries sustained by him on his head.

a) During cross-examination, he admitted that he did not file any document to show that he summoned mediators of Ex.P11. MOs.6 and 10 were not sealed and that they are available in the local market.

xix) PW.21, Inspector of Police, deposed that on receipt of telephonic information regarding murder at Premnagar, Amberpet, he

went there and found five injured persons, among them, three are male and two are female persons. He secured the services of 108 Ambulance and got them shifted to Osmania General Hospital, Hyderabad. He preserved the scene of offence. On that day at about 10.00 A.M., he received written report from PW.1 vide Ex.P1 and thereafter he registered a case in Crime No.207 of 2010 under Sections - 452, 302 and 307 read with 34 of IPC, which is Ex.P47.

a) During cross-examination, he admitted that he has not noted in Ex.P1 that he received Ex.P1 at the scene of offence. There is no documentary evidence to show that he has deputed his subordinates to preserve the scene of offence. With regard to receiving the telephonic information on 30.05.2010, there is GD entry and also in Part-I CD. In column No.3 of FIR under Ex.P47, they kept it blank. They have to fill up all the columns in FIR. He does not remember whether he received report from PW.1 at the scene of offence or at the police station. In Ex.P8, the names of accused Nos.3 to 9 were not noted. In Ex.P1, the names of accused Nos.3 to 9 were not noted. He did not examine any relatives of victims and neighbours of victims at the time of his visiting scene of offence on receipt of information.

b) He further admitted for the first time that at the time of receiving Ex.P1, he learnt the names of assailants. At that time, local people gathered. He did not obtain the signature of PW.1 in column No.13 of the FIR.

xx) PW.22, the Investigating Officer, deposed that on 30.05.2010 as per the instructions of his DCP, East Zone, Hyderabad, he took up investigation from PW.21. He visited the scene of offence and conducted scene of offence observation *panchanama-cum*-seizure *panchanama* in the presence of mediators, PWs.7 and 8 and also drafted a rough sketch.

a) He further deposed that he examined and recorded the statements of PW.1, LW.2 and PW.2 on 30.05.2010 under Section - 161 of Cr.P.C., PWs.3 and 4 on 31.05.2010, PWs.6 and 7 on 07.06.2010 and other witnesses. He also recovered the material objects and seized under cover of *panchanama.*

b) During cross-examination, he admitted that presence of PW.1 at the scene of offence prior to Ex.P1 is also not borne out in the record. In the arrest card of accused No.2, it is shown as Syed Sharfuddin and first alias name is Shafiuddin and second alias name is not mentioned. After ascertaining all the details from the accused,

arrest card was issued. In his entire investigation, none of the witnesses stated that Syed Sharfuddin or Sharfuddin has participated in the commission of offence, but he stated that PW.1 has stated that Shareef is one of the accused.

c) He further admitted that he did not collect how and when the mother of accused No.1 died. He has not collected any document to show that PW.1 was staying at her in-law's house. With the clue of pair of chappals, one can detect the culprit. He has not used the pair of chappals seized from the scene of offence to detect the culprit. He did not conduct investigation with regard to subsisting matrimonial relationship between accused No.1 and deceased No.5. He has not sealed the seized items. The names of accused Nos.3 to 9 are not noted in Ex.P1 and inquest reports under Exs.P8 to P12.

xxi) The aforesaid depositions would reveal that PW.1 is the eye-witness to the incident. She is the wife of deceased No.3. In Ex.P1 - complaint and also in her statement, she has narrated about the incident.

xxii) Whereas, according to learned counsel for the respondents - accused, she is an interested witness and, therefore, her evidence

cannot be believed. Further, in Ex.P1 - complaint, she has referred the names of accused Nos.1 and 2 and she has not mentioned the names of other accused. She has stated that accused Nos.1, 2 along with other followers entered into the house, whereas in her deposition, she has stated about the names of accused Nos.1 to 4. Thus, there is improvement in her evidence and, therefore, she is a planted witness. Further, there are contradictions in Ex.P1 as well as in her statement recorded under Section - 161 of Cr.P.C. Therefore, on consideration of said aspects, learned trial Court disbelieved the evidence of PW.1 and acquitted the accused.

xxiii) As discussed above, PW.1 is the wife of deceased No.3. After the death of deceased No.3, she got married for the second time. She has narrated the entire incident. Perusal of record would reveal that she has not received any injuries. She has specifically deposed that her husband pushed her into the hall adjacent to it and bolted the grilled gate. During cross-examination, nothing contra was elicited from her. Learned counsel for the accused suggested to her that she was having an affair with the present/second husband prior to the marriage with deceased No.3 and that she was not interested in marrying deceased No.3. Thus, the defence taken by the accused is

contradictory. Therefore, they cannot contend that PW.1 is an interested witness.

xxiv) PWs.5 and 6 stated before the police in their statement recorded under Section - 161 of Cr.P.C. that they used to go to the house of deceased No.1 to take Ayurvedic medicine for jaundice, and on 30.05.2010, they went to the house of deceased No.1 for the purpose of the said medicines. They have also stated about the death of the said five persons including deceased No.1 and that they have heard that accused No.1, son-in-law of deceased No.1, and his family members committed murder of all the deceased due to matrimonial disputes between accused No.1 and deceased No.5. Thereafter, they have turned hostile and did not support the prosecution case.

xxv) As stated supra, the incident had occurred on 30.05.2010 and the depositions of PWs.5 and 6 were recorded on 24.06.2011 i.e., after about one year. Thus, the respondents - accused won over the said witnesses, who are women.

xxvi) PWs.3 and 4 are neighbours of the deceased family. Though they turned hostile, their evidence to the extent it is relevant can be relied upon as held by the Apex Court in **Ravasaheb @ Ravasahebgouda**[4], wherein it was held as under:

> "41. Merely because no recovery was made from anyone apart from Accused 2 and 4 would not mean that others were not present at the scene of the crime; simply because a number of witnesses had turned hostile, does not on its own give a ground to reject the evidence of PW 1; and that PW 1 being the brother of the deceased and therefore, is an interested as well a chance witness, are untenable submissions. It is in the backdrop that we do not find favour with the submissions of Mr Nagamuthu S., and Dr K. Radhakrishnan, learned Senior Counsel appearing for the appellants that the conviction of eight persons based on solitary evidence is not justified, particularly when there is no vagueness in his testimony with respect to the role ascribed to each one of the accused."

PWs.3 and 4 have specifically deposed about the death of the deceased. PW.3 specifically deposed that his daughter-in-law informed him that there was a quarrel in the house of deceased No.1, he opened the door of the window of his house and noticed two women in *burka* dress in front of the house of deceased No.1. He tried to go to the house of deceased No.1, but his grandson stopped him. Therefore, he did not go. In the meanwhile, two (02) male persons came out from the house of deceased No.1 and left the place

and those two women also followed those two persons. He came to know that due to matrimonial disputes between accused No.1 and deceased No.5, accused No.1 and his family members killed deceased No.1 and his family members. PW.4's evidence is also on the same lines. Therefore, to the said extent, their evidence can be considered.

xxvii) The evidence of other witnesses including *panch* witnesses is supported by medical evidence. PW.15 is the doctor, who treated accused No.1 and issued Ex.P41 - wound certificate. It is his specific evidence that accused No.1 was brought by police constable saying that he (accused No.1) is an accused in criminal case and, therefore, PW.15 treated accused No.1 and gave Ex.P41 - wound certificate.

xxviii) PW.16 is the doctor, who conducted autopsy over the dead bodies of all the deceased and issued post-mortem examination reports. She has specifically stated about the injuries sustained by the deceased and also opined that such injuries were caused due to beating them with iron rods and blunt objects. PW.17 also specifically deposed about collecting material objects and he is a Member of Clue Team. Ex.P62 is the FSL report, wherein it is mentioned that human blood is detected on item Nos.1 to 6 and 8 to 28, and blood group of

blood stains on item Nos.1 to 6, 9, 11, 12, 14, 15 and 16 is of 'AB' blood group; blood group of blood stains on item Nos.22 to 26 is of 'A' blood group; blood group of blood stains on item Nos.8, 10, 13, 17 to 21, 27 and 28 could not be determined; and blood is not detected on item No.7, which is received as control for item Nos.1 to 6. Therefore, depositions of PWs.1 to 4 are supported by medical evidence and also depositions of PWs.15 to 22.

xxix) But, the trial Court failed to consider the same and acquitted the accused only on the grounds that there are contradictions in the evidence of PW.1 and improvement in her evidence; there is no mention about the grill gate in Ex.P7 - rough sketch; the said fact was admitted by PW.22 - Investigating Officer; PW.1 is an interested witness; there is delay in lodging Ex.P1 and the evidence of PW.1 is not inspiring confidence. The said observations of trial Court are contrary to the evidence and the principle laid down by the Apex Court in the above decisions.

20. **FAULTY/DEFECT INVESTIGATION**:

i) As discussed above, PW.1 is the wife of deceased No.3. During cross-examination, she has categorically admitted that after the death of her husband, deceased No.3, she got remarried. She has

specifically deposed about the incident. According to her, deceased No.3, her husband, pushed her inside and bolted the gate. She has narrated the entire incident. Though learned counsel for the respondents contended that she is a planted and interested witness, there was no suggestion to her with regard to the same during cross-examination. On the other hand, the accused tried to take advantage of her second marriage performed on 02.03.2011 and the incident had occurred on 30.05.2010. As per customs in Muslim Community, female will not participate in engagement, marriage talks etc. She being *pardanashin* lady, she has not seen accused Nos.1 to 4, but she has specifically deposed that accused Nos.1 to 3 visited her in-laws' house for 2-3 times after her marriage and she saw them. She also informed about the incident to the husband of her sister-in-law i.e., Mohd. Ather. He came to the scene of offence within 5 or 10 minutes and called for '108' Ambulance. She has also informed the incident to her father, who came to the scene of offence within 5 or 10 minutes after Mohd. Ather came. But, the prosecution neither examined them, nor collected call data of their mobiles including deceased No.1.

ii) The trial Court in the impugned judgment gave a finding that there is no mention about the grill gate in Ex.P7 - rough sketch

and PW.22 - Investigating Officer admitted the said fact. Just because the Investigating Officer did not mention about the said grill gate in Ex.P7 - rough sketch, it cannot be said that there was no grill gate at all and that there is contradiction in the evidence of PW.1. At the same time, it is apt to note that there was no suggestion to PW.1 and PW.2 on the said aspect during cross-examination. Therefore, faulty/defect investigation is not a ground to acquit the accused, more particularly, in a matter like this, where entire family of five members were murdered. This Court has to consider the entire evidence and analyze the same. In such event, minor omissions or contradictions can be ignored.

iii) It is settled law that defect or faulty investigation is not a ground to acquit the accused and the accused cannot take faulty/defect investigation as a defence. In a matter like this, we are of the considered opinion that it is a minor omission and should have been ignored by the trial Court.

iv) In **C. Muniappan v. State of Tamil Nadu**[5], the Apex Court held as follows:

> "44. There may be highly defective investigation in a case. However, it is to be examined as to

[5]. (2010) 9 SCC 567

whether there is any lapse by the I.O. and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation."

v) In **Visveswaran v. State**[6], the Apex Court held as under:

"….. In defective investigation, the only requirement is of extra caution by courts while evaluating evidence. It would not be just to acquit the accused solely as a result of defective

[6]. (2003) 6 SCC 73

> investigation. Any deficiency or irregularity in investigation need not necessarily lead to rejection of the case of prosecution when it is otherwise proved."

vi) In **Karnel Singh v. State of M.P.**[7], the Apex Court held as under:

> "5. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.
>
> 6. …..To acquit solely on that ground would be adding insult to injury."

vii) In **Sheo Shankar Singh v. State of Jharkhand**[8], the Apex Court held as follows:

> "42. …Deficiencies in investigation by way of omissions and lapses on the part of investigating agency cannot in themselves justify a total rejection of the prosecution case. In Ram Bihari Yadav v. State of Bihar and Ors [(1998(4 SCC 517] this Court while dealing with the effect of shoddy investigation of cases held that if primacy

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[7]. (1995) 5 SCC 518
[8]. (2011) 3 SCC 654

> was given to such negligent investigation or to the omissions and lapses committed in the course of investigation, it will shake the confidence of the people not only in the law enforcing agency but also in the administration of justice."

viii) In **Ankush Maruti Shinde v. State of Maharashtra**[9], the Apex Court held as follows:

> "Before parting with the present order, we strongly deprecate the conduct on the part of the investigating agency and the prosecution. Because of such lapses, and more particularly in not defective investigation, the real culprits have gone out of the clutches of the law and got scot free."

ix) In **State of Gujarat v. Kishanbhai**[10], the Apex Court gave certain directions with regard to the defect/faulty investigation in paragraph Nos.22 and 23 and the same are relevant and are extracted below:

> "22. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore essential that every State should put in place a procedural mechanism which would ensure that

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[9]. (2009) 6 SCC 667
[10]. (2014) 5 SCC 108

the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments should be vested with aforesaid responsibility. The consideration at the hands of the above committee, should be utilised for crystallising mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/ prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials should be vested in the same Committee of senior officers referred to above. Judgments like the one in hand (depicting more than ten glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course-content will be reviewed by the above Committee annually, on the basis of

fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the Standing Committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence when they are made liable to suffer departmental action for their lapses.

23. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official (s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties

> on both sides of criminal litigation. Accordingly, we direct the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months."

x) In **Harijana Thirupala v. Public Prosecutor**[11], the Apex Court held in paragraph No.11, which is relevant and the same is extracted as follows:

> "11. ….. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the curt must be integrated not truncated or isolated. In other words, the impact of evidence in totality on the prosecution case or innocence of accused has to be kept in mind in

[11]. (2002) 6 SCC 470

> coming the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses…."

xi) In **Rammi @ Rameshwar v. State of Madhya Pradesh**[12], the Apex Court held as follows:

> "….But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny."

xii) In **Appabhai v. State of Gujarat**[13], the Apex Court held as under:

> "The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not

[12]. (1999) 8 SCC 649
[13]. AIR 1988 SC 696

shake the basic version of the prosecution case may be discarded."

xiii) Relying on the said judgments, a Three-Judge bench of the Hon'ble Apex Court in **Manoj v. State of Madhya Pradesh**[14] reiterated the aforesaid principle.

xiv) In the light of the aforesaid discussion, the accused cannot take faulty/defect investigation as a defence and it is not a ground to acquit them. Thus, the trial Court erred in acquitting the accused by observing that there is defect in conducting investigation. Therefore, the said observation/finding of the trial Court in the impugned judgment is contrary to the principle laid down by the Apex Court in the aforesaid decisions.

21. At the cost of repetition, as stated supra, PW.1 has specifically stated about the entire incident. The accused are taking advantage that she married deceased No.3 only three months prior to the incident, she being *pardanashin* lady, she had no occasion to see the accused and, therefore, she has not identified the accused. However, she has specifically stated about the presence of accused Nos.1 and 2 in Ex.P1 and the presence of accused Nos.1 to 4 in her

[14]. (2023) 2 SCC 353

deposition. Therefore, she cannot be treated as an interested witness. As stated above, there are minor contradictions in Ex.P1 and in her deposition.

22. It is settled principle that FIR is not an encyclopedia. It is only information given to the police for the first time. Admittedly, PW.1 has not mentioned the names of other accused except accused Nos.1 and 2 in Ex.P1.

i) As stated supra, it is a case of family murder. Five (05) persons of her family including her husband were murdered at about 6.15 A.M. She gave complaint (Ex.P1) to the police at 10.00 A.M. by sitting in a house opposite her house. In a situation like this, it cannot be expected from her to narrate the names in detail. Therefore, it cannot be said that her evidence is not trust-worthy and basing on her evidence, conviction cannot be recorded.

23. Learned trial Court in paragraph No.39 of the impugned judgment held that PW.1 is very much interested ~~for~~ in the prosecution case being wife of deceased No.3 and daughter-in-law of deceased Nos.1 and 2 and sister-in-law of deceased Nos.4 and 5. Her evidence is also not trustworthy. In paragraph No.43, the trial Court held that quality of evidence is required, but not quantity of evidence.

PW.1 has supported the case of prosecution. She is interested in the prosecution case and further her evidence is not inspiring confidence. The said findings of the trial Court are contrary to record and deposition of PW.1.

24. As discussed above, during cross-examination, no suggestion was put to PW.1 that she was not present at the time of incident at the scene of offence and that she is a planted witness. The defence taken by the accused is that she has an affair with her second husband prior to marrying him and that she was not interested in marrying her first husband. The respondents - accused failed to elicit anything from PW.1 that neither she nor her second husband is having animosity with the family of the accused. The other defence taken by the accused is that the persons with whom deceased No.1 and his family members have disputes with regard to the property of deceased No.1 situated at Ismail Nagar, Yerrakunta, Barkas. Therefore, the defence taken by the accused is contradictory. In the light of the same, the contention of learned counsel for the respondents - accused that PW.1 is an interested witness, her evidence cannot be believed as there are contradictions in her evidence and the findings of the trial

Court on the same are also contrary to the record and the principle laid down by the Apex Court in the aforesaid judgments.

i) In view of the above discussion, the decision in **B.N. Singh**[3] is inapplicable to the facts of the present case. The facts in **Meharaj Sing**[1] are different to the facts of the present case. In **Narendrasinh Keshubhai Zala**[2], conduct of the witness therein was unnatural and unexplained circumstances were also there. On examination of the facts of the said case, the Apex Court observed that there was unnatural conduct and unexplained circumstances and, therefore, deposition of witness cannot be believed. But whereas, in the present case, PW.1 has specifically stated about the entire incident and there are only minor contradictions and omissions. Thus, the said decision is also not applicable to the present case.

25. It is further contended by learned counsel for the respondents that there is delay in lodging the complaint. As stated supra, the incident had occurred at about 6.15 A.M. She informed the said incident to the husband of PW.2, Mohd. Ather, and her father. Mohd. Ather informed 108 Ambulance. There were five (05) murders and all the deceased are her family members. Deceased No.3 is her husband. All the injured persons were taken to the Osmania General

Hospital in 108 Ambulance. The doctors at Osmania General Hospital declared deceased Nos.1 to 4 dead. Deceased No.5 died after two (02) days. It was a panic situation to PW.1 and she is a woman. Even the police reached the scene of offence within 10 or 15 minutes. PW.21, Inspector of Police, Amberpet Police Station, specifically deposed that on 30.05.2010 at about 6.30 or 6.45 A.M., their police received telephonic information to its landline by an unknown person stating that there was a murder at Premnagar, Amberpet. At that time, he was in the police station after doing his night duty. Immediately, on receipt of the said telephonic information, he rushed to the scene of offence at Premnagar. There was a pool of crowd. He secured the services of 108 Ambulance and got shifted the injured persons to Osmania General Hospital. He observed scene of offence. By the time Ambulance left for the hospital, it was about 7.30 A.M. On that day at about 10.00 A.M., he received written report (Ex.P1) from PW.1.

i) Thus, the aforesaid facts would reveal that the incident took place at 6.15 A.M. and PW.1 gave complaint at 10.00 A.M. Therefore, it cannot be said that there is delay in lodging the

complaint. We are of the considered opinion that there is no delay in lodging the complaint.

26. It is contended by learned counsel for the respondents - accused that dying declaration of deceased No.5 was not recorded and test identification parade was not conducted. As stated above, all the deceased were shifted to Osmania General Hospital in 108 Ambulance and the doctors declared deceased Nos.1 to 4 dead. The condition of deceased No.5 was serious as she suffered grievous injuries and died after two (02) days i.e., 02.06.2010. PW.16 conducted autopsy over the dead body of deceased No.5. Dying declaration is recorded when the condition of the injured is considerably coherent and is in a condition to give statement.

i) As per Rule - 33 of the Criminal Rules of Practice, the doctor has to confirm with regard to the condition of the injured before recording her declaration. He should obtain a certificate from the Medical Officer as to the mental condition of the declarant. It appears that since deceased No.5 was not in a position to give a statement, he could not have recorded her statement. Therefore, the contention of learned counsel for respondents - accused that dying declaration of

deceased No.5 was not recorded cannot be a ground to acquit the accused.

ii) With regard to test identification parade, according to learned counsel for respondents - accused, PW.1 belongs to Muslim community and she being *pardanashin* lady never saw the accused and, therefore, the question of her identifying the accused does not arise.

iii) Rule - 34 of the Criminal Rules of Practice deals with the procedure to be followed while conducting test identification parade for identification of accused. As stated above, in the present case, accused No.1 is nephew of deceased No.2. He is the husband of deceased No.5. The marriage PW.1 with deceased No.3 was performed on 19.02.2010. According to her, accused Nos.1 to 4 came to her in-laws' house two or three times to discuss about matrimonial disputes of accused No.1 with deceased No.5. She saw them. Therefore, she has identified them. Her evidence is supported by PWs.3 and 4. Thus, there was no need to conduct test identification parade in the present case. Taking advantage that PW.1, being Muslim and *pardanashin* lady is unable to identify the accused and that the Investigating Officer did not conduct test identification

parade, such defence has been taken by the accused. But, in view of the above discussion, such contention of learned counsel for the respondents is unsustainable. PW.1, eye-witness identified accused Nos.1 to 4.

27. Learned counsel for the respondents - accused relying on the principle laid down by the Apex Court in **State (Delhi Administration) v. Laxman Kumar**[15] would contend that Courts cannot allow any emotional and sentimental feelings to come in the way of judicial pronouncements. Once sentimental and emotional feelings are allowed to enter the judicial mind, the Judge is bound to view the evidence with bias and in that case the conclusion may also be biased resulting in some cases thereby rendering great injustice. The cases have to be decided strictly on evidence howsoever cruel or horrifying the crime may be. All possible chances of innocent man being convicted have to be ruled out. There should be no hostile atmosphere against an accused in Court as well as a decision. With the said observations, the Apex Court held as *"….This has to be avoided at allcosts. We are sorry for the above diversion but it has become necessary in this case."*

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[15]. (1985) 4 SCC 476

i) First of all, we are human beings before becoming judges. We will also have emotions and sentimental feelings. At the same time, such emotional feelings shall not be allowed to enter into our judicial mind. We are conscious of the said fact. We have to analyze the entire evidence and come to a conclusion as to whether the trial Court is right in acquitting the accused. We have also to assess the probative value of the evidence produced by the prosecution, both oral and documentary. This Court, being an appellate Court has power to re-examine and analysis the entire evidence and come to a conclusion independently.

28. In **Jafarudheen v. State of Kerala**[16], the Apex Court held as under:

> "25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the

[16]. 2022 SCC Online SC 495

> presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

29. In **Ravi Sharma v. State (Government of N.C.T. of Delhi)**[17] the Apex Court reiterated the aforesaid principle.

30. In **Harbans Singh v. State of Punjab**[18], the Apex Court held as under:

> "In many cases, especially the earlier ones, the Court has in laying down such principles emphasised the necessity of interference with an order of acquittal being based only on "compelling and substantial reasons" and has expressed the view that unless such reasons are present an appeal court should not interfere with an order of acquittal. (Vide Suraj Pal Singh v. State [1952 SCR 194]; Ajmer Singh v. State of Punjab [(1952) 2 SCC 709 : 1953 SCR 418]; Puran v. State of Punjab [(1952) 2 SCC 454 : AIR (1953) SC 459]). The use of the words "compelling reasons" embarrassed some of the High Courts in exercising their jurisdiction in appeals against acquittals and difficulties occasionally arose as to what this Court

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17. (2022) 8 SCC 536
18. AIR 1962 SC 439

had meant by the words “compelling reasons”. In later years the Court has often avoided emphasis on “compelling reasons” but nonetheless adhered to the view expressed earlier that before interfering in appeal with an order of acquittal a court must examine not only questions of law and fact in all their aspects but must also closely and carefully examine the reasons which impelled the lower courts to acquit the accused and should interfere only if satisfied, after such examination that the conclusion reached by the lower court that the guilt of the person has not been proved is unreasonable. (Vide Chinta v. State of Madhya Pradesh, Criminal Appeal No. 178 of 1959); Ashrafkha Haibatkha Pathan v. State of Bombay, Criminal Appeal No. 38 of 1960).

9. It is clear that in emphasising in many cases the necessity of “compelling reasons” to justify an interference with an order of acquittal the court did not in any way try to curtail the power bestowed on appellate courts under Section 423 of the Code of Criminal Procedure when hearing appeals against acquittal; but conscious of the intense dislike in our jurisprudence of the conviction of innocent persons and of the fact that in many systems of jurisprudence the law does not provide at all for any appeal against an order of acquittal the court was anxious to impress on the appellant

> courts the importance of bestowing special care in the sifting of evidence in appeal against acquittals. As has already been pointed out less emphasis is being given in the more recent pronouncements of this Court on "compelling reasons". But, on close analysis, it is clear that the principles laid down by the Court in this matter have remained the same. What may be called the golden thread running through all these decisions is the Rule that in deciding appeals against acquittal the court of appeal must examine the evidence with particular care, must examine also the reasons on which the order of acquittal was based and should interfere with the order only when satisfied that the view taken by the acquitting Judge is clearly unreasonable. Once the appellate court comes to the conclusion that the view taken by the lower court is clearly an unreasonable one that itself is a "compelling reason" for interference. For, it is a court's duty to convict a guilty person when the guilt is established beyond reasonable doubt, no less than it is its duty to acquit the accused when such guilt is not so established."

31. In **Champaben Govindbhai v. Popatbhai Manilal**[19], the Apex Court held as under:

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[19]. (2009) 13 SCC 662

"12. It is well settled that in an appeal against acquittal the appellate court does not reverse the finding of acquittal if the court while granting acquittal has taken a reasonable or a possible view on the evidence and materials on record. Law is equally well settled that if the view taken by the court granting acquittal is perverse or shocks the conscience of the higher court, the finding of acquittal can be reversed.

13. In the instant case, the High Court as the first appellate court has a duty to consider in detail the material on record and also should appreciate the evidence very carefully before affirming the order of acquittal given by the trial court.

14. The counsel for the respondents referred to the decision of this Court in **Chandrappa v. State of Karnataka [(2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325]** to put forward the argument that an appellate court must bear in mind that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having been acquitted, the presumption of his innocence is further

reinforced, reaffirmed and strengthened by the trial court.

5. In this connection we may refer to the principles summarised in para 42 at SCC p. 432 of the judgment in Chandrappa case and they are extracted:

> "42. … (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
>
> (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
>
> (3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
>
> (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him

> under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
>
> (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."
>
> Also, if two reasonable views are possible on the basis of the evidence on record and one favourable to the accused has been taken by the trial court it ought not to be disturbed by the appellate court (para 44)."

32. As stated supra, we have considered the entire evidence, both oral and documentary. We are of the considered view that PW.1 is not an interested witness but an eye-witness. Therefore, it cannot be said that her evidence is not inspiring confidence. Further, the accused took a contradictory defence. Therefore, accused Nos.1 to 4 are hereby guilty of the offence under Section - 302 of IPC.

33. As far as offence under Section - 120B of IPC is concerned, criminal conspiracy is defined under Section - 120A of IPC and punishable under Section - 120B of IPC. To make someone guilty

under Section 120B for the commission of the offence of criminal conspiracy, an intentional agreement to commit an illegal act is enough The essential ingredients of the offence of criminal conspiracy was elucidated by the Apex Court in **Rajiv Kumar v. State of U.P.**[20] are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. "It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is the sine qua non of criminal conspiracy". As stated above, PW.1 specifically deposed in her evidence that accused Nos.1 to 4 forcibly entered into her house. Accused No.1 firstly entered into her house. They have bolted the gate of the house. Then, accused No.1 first hit her father-in-law (deceased No.1) with an iron rod on his head. Deceased No.1 started shouting and then her mother-in-law (deceased No.2) came into the *veranda*, accused No.1 hit her also with the same iron rod on her head. Both her parents-in-law fell down with bleeding injuries on their hand. Deceased Nos.3 to 5 came to the *verandah* from inside the house, then all accused Nos.1 to 4

[20]. 2017 INSC 699

began to beat them with iron rods and sticks due to which they fell on the floor. She further deposed that she was also present there by the time her husband entered into the *verandah* and he had pushed her into the hall adjacent to it and bolted the grilled gate of it, then accused Nos.1 to 4 left the house.

i) In view of the above evidence, it is clear that accused Nos.1 to 4 came together the house of deceased to kill them, for which accused No.1 has already recce while accused No.2 observed the presence of deceased Nos.1 to 5 in the house. Thus, there is clear evidence to show meeting of minds among accused Nos.1 to 4 in commission of offence under Section - 302 of IPC and accordingly they are also liable for punishment for the offence under Section - 120B of IPC.

34. As far as offence under Section - 452 of IPC is concerned, to attract this offence, there must be indication that the accused had committed house trespass after having made preparation for causing hurt to the de facto complainant or to assault or wrongfully restrain him or for putting him in fear of hurt, assault or wrongful restraint. In view of the same, the evidence of PW.1 is very clear with regard to accused Nos.1 to 4 entering into the house of her in-laws' and

committing the murder of deceased Nso.1 to 5. Therefore, accused Nos.1 to 4 are also liable for the offence under Section - 452 of IPC.

35. As far as offence under Section - 148 of IPC is concerned, 'rioting' is defined as the criminal behavior of five or more people acting jointly to attain an illegal shared goal by force or violence in Section - 146 of IPC. Each and every participant is held accountable for the riot because it was primarily devoted to further a common goal. The accused would be entitled for an acquittal if the prosecution failed to prove that they shared a same goal. In the present case, as per the evidence of PW.1 it is clear that accused Nos.1 to 4 only entered into the house of her in-laws and this Court also found them guilty. There is no participation of five or more persons in this case. Therefore, prosecution failed to prove the offence under Section - 148 of IPC against accused Nos.1 to 4 herein and so also Section - 149 read with 302 of IPC.

36. It is also settled principle that in criminal justice system, accused is presumed to be an innocent unless and until guilt is proved beyond reasonable doubt. The prosecution has to prove the guilt of accused Nos.1 to 4 by producing legally acceptable evidence. Burden lies on the prosecution. In the present case, it is a family murder case.

Five members of one family were murdered. PW.1 is the eye-witness. Depositions of PWs.3 and 4, neighbours, can be believed to the extent which is useful to the prosecution as held by the Apex Court in the aforesaid decisions. The said evidence is supported by medical evidence, but the trial Court failed to consider all the said aspects in the impugned judgment and erroneously acquitted the accused.

37. As stated supra, accused No.2 died during pendency of present appeal and, therefore, this Court abated the proceedings against him vide orders dated 28.02.2024. There is no reference with regard to accused Nos.5 to 9 in Ex.P1 and the deposition of PW.1. PW.1 has not stated about the presence of accused Nos.5 to 9 in her statement recorded under Section - 161 of Cr.P.C. However, PW.3, neighbour deposed that two (02) women in *burkha* were present and they have followed along with male, who came out from the house of deceased No.1. Thus, there is no evidence, much less legally acceptable evidence against accused Nos.5 to 9.

38. Learned Additional Public Prosecutor, who conducted the case before the trial Court, represented that there is no case at all against accused Nos.5 to 9. The same was also considered by the trial Court in paragraph No.50 of the impugned judgment.

39. At the same time, there is evidence against accused Nos.1 to 4. The said evidence is legally acceptable evidence. The evidence of PWs.1 to 4 is supported by other witnesses including *panch* witnesses for recovery of material objects. Nothing contra was elicited from them during cross-examination. The said evidence is supported by medical evidence including Ex.P62 - FSL report. Without considering the said aspects, the trial Court acquitted accused Nos.1 to 4. Thus, the impugned judgment is not based on the evidence, both oral and documentary and the same is liable to be set aside to the extent indicated.

40. **CONCLUSION**:

i) In view of the aforesaid discussion, the present appeal is allowed in part setting aside the impugned judgment dated 23.02.2012 passed by learned I-Additional Metropolitan Sessions Judge, Hyderabad in Sessions Case No.94 of 2011 in so far as accused Nos.1 to 4.

ii) Accused Nos.1 to 4 are accordingly found guilty of the offences under Sections - 120B and 452; accused No.1 is also found guilty of offence under Section - 302 of IPC under three (03) counts and accused Nos.2 to 4 are found guilty of offence under Section -

302 of IPC, and they are convicted of the said offences. However, accused Nos.1 to 4 are acquitted of the offences under Sections - 148 and 149 read with 302 of IPC. Further, the impugned judgment dated 23.02.2012 passed by learned trial Court acquitting accused Nos.5 to 9 for the aforesaid offences is hereby confirmed.

iii) Though accused No.2 is found guilty of the aforesaid offences, since he died during pendency of the present appeal, this appeal against him stood abated by this Court vide order dated 28.02.2024.

iv) Today, accused Nos.1, 3 and 4 are absent. Therefore, learned counsel for the respondents - accused is directed to inform accused Nos.1, 3 and 4 to be present before this Court on 13.06.2024 to hear them with regard to quantum of sentence under Section - 235 (2) of Cr.P.C. List on 13.06.2024.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal shall stand closed.

K. LAKSHMAN, J

JUVVADI SRIDEVI, J

7th June, 2024
Mgr

Date 13.06.2024:

41. Today, Accused Nos.1, 3 and 4 are present and we have apprised the findings of the Court and also the fact that the offences levelled against them are proved. We have heard accused Nos.1, 3 and 4 under Section - 235 (2) of Cr.P.C. on sentence. When questioned accused Nos.1, 3 and 4 with regard to quantum of sentence, accused No.1 stated that he has not committed any offence, he has small children; Accused No.3 stated that he has not committed any offence; that he was 19 years old at the time of commission of offence and he has also small children and accused No.4 stated that he has not committed any offence and accordingly all of them prayed this Court to take a lenient view.

i) As discussed above, it is a family murder case. Five (05) persons of one family were murdered. Having considered the nature of offences and the manner in which the same were committed by accused Nos.1, 3 and 4, we are of the considered opinion that we are not inclined to restrict ourselves to take lenient view to impose minimum sentence prescribed for the aforesaid offences.

ii) Section - 120B of IPC prescribes the punishment as whoever is a party to a criminal conspiracy to commit an offence

punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in the Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

iii) Therefore, accused Nos.1, 3 and 4 are sentenced to undergo life imprisonment for the offence under Section - 120B of IPC.

iv) Accused Nos.1, 3 and 4 are also sentenced to undergo rigorous imprisonment for a period of seven years each and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) each and in default, to undergo S.I. for a period of six (06) months each for the offence U/S - 452 of IPC.

v) Accused No.1 is also sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten Thousand Only) and in default, to undergo S.I. for a period of six (06) months, for the offence U/S - 302 of IPC under three (03) counts.

vi) Accused Nos.3 and 4 are also sentenced to undergo life imprisonment each and to pay a fine of Rs.10,000/- (Rupees Ten Thousand Only) each and in default, to undergo S.I. for a period of six months each for the offence U/S. 302 of IPC.

vii) All the aforesaid sentences of imprisonment shall run concurrently.

viii) Accused Nos.1, 3 and 4 are directed to surrender before I - Additional Metropolitan Sessions Judge, Hyderabad, within one (01) month from today for serving out the aforesaid sentences of imprisonment. If they fail to surrender, learned I-Additional Metropolitan Sessions Judge, Hyderabad shall take necessary steps in accordance with law.

K. LAKSHMAN, J

JUVVADI SRIDEVI, J

13th June, 2024

Note:

1. The Registry is directed to furnish copy of judgment to accused Nos.1, 3 and 4 forthwith;
2. The Registry is also directed to send back the original record to the trial Court.

(B/O.) Mgr